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SUPREME COURT OF THE UNITED STATES.

No. 204.

JAMES LEE AND BENJAMIN C. LEE, PARTNERS, AS JAMES LEE & CO., PLAINTIFFS IN ERROR,

vs.

THE CHILLICOTHE BRANCH OF THE STATE BANK OF OHIO.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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At a circuit court of the United States for the seventh circuit and southern district of Ohio, begun and held at the city of Cincinnati, on the third Tuesday, being the seventeenth day of April, in the year of our Lord one thousand eight hundred and sixty, and in the eighty-fourth year of the independence of the United States of America, before the honorable John McLean and the honorable Humphrey H. Leavitt, judges of said court, among other the following proceedings were had, to wit:

JAMES LEE & BENJAMIN C. LEE, partners as James Lee & Co., *vs.* THE CHILLICOTHE BRANCH OF THE STATE BANK OF OHIO. } In assumpsit.

Summons.

Be it remembered that heretofore, to wit, on the 28th day of November, in the year of our Lord one thousand eight hundred and fifty-seven, came the said plaintiffs by their attorneys, and sued out of the clerk's office of said court a certain writ of summons ad respondendum against the said defendant, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

The President of the United States of America to the marshal of said district, greeting:

We command you to summon the Chillicothe branch of the State Bank of Ohio, a corporation of said State of Ohio, having its office in said State of Ohio, if it be found in your bailiwick, to be and appear before the judges of the circuit court of the United States for the southern district of Ohio aforesaid, at Cincinnati, on the
2 third Tuesday in the month of December, 1857, to answer James Lee and Benjamin C. Lee, partners doing business under the style of James Lee & Co., citizens of and residents in the State of New York, of a plea of assumpsit, damages $100,000 00 and have then and there this writ.

Witness the honorable Roger R. Taney, Chief Justice of
[SEAL.] the United States, this 28th day of November, 1857, and in the 82d year of the independence of the United States of America.

Attest: WM. MINER, *Clerk.*

Upon which writ was the following endorsement, to wit:

Cause of action.

Suit brought against the said defendant on its indorsement of fourteen separate bills of exchange, of all which the said plaintiffs are the present holders and indorsers, as follows:

1. A bill dated at Chillicothe, Ohio, April 29, 1857, for $5,000 $\frac{00}{100}$, drawn by A. McDonald, Enos Prather, and Nelson Prather, on E. Ludlow, esq., cas. Ohio Life Ins. and Trust Co., New York, payable four months after date to the order of the defendant, and indorsed by the defendant.

2d. A bill dated at Chillicothe, O., May 28, 1857, for $4,000 $\frac{00}{100}$ drawn by Jones & Foster, T. C. Foster, and William Jones, on E. Ludlow, esq., cas. Ohio Life Ins. & Trust Co., New York, payable ninety days after date to the order of the defendant, and indorsed by the defendant.

3d. A bill dated at Chillicothe, Ohio, June 12th, 1857, for $3,100 $\frac{00}{100}$, drawn by A. W. Seymour, F. G. Seymour, and R. R. Seymour, on E. Ludlow, esq., cas. Ohio Life Insurance and Trust Company, New York, payable ninety days after date to the order of the defendant, and indorsed by the defendant.

4th. A bill dated at Chillicothe, Ohio, June 12, 1857, for $4,000 $\frac{00}{100}$, drawn by James Jones, Isaac Moore, Henry
3 Blain, on E. Ludlow, esq., cashier Ohio Life Insurance and Trust Company, New York, payable ninety days after date to the order of the defendant, and indorsed by the defendant.

5th. A bill dated at Chillicothe, Ohio, June 22d, 1857, for $1,000 $\frac{00}{100}$, drawn by A. E. Brush & Co., Aaron Stookey, and S. W. Brush & Co., on E. Ludlow, esq., cashier Ohio Life Insurance and Trust Co., New York, payable eighty days after date to the order of the defendant, and indorsed by the defendant.

6th. A bill dated at Chillicothe, Ohio, May 4th, 1857, for $5,000 $\frac{00}{100}$, drawn by George Wood, John Marsfield, and D. Adams, on E. Ludlow, esq., cashier Ohio Life Insurance and Trust Company, New York, payable four months after date to the order of the defendant, and indorsed by the defendant.

7th. A bill dated at Chillicothe, Ohio, June 2d, 1857, for $5,000 00, drawn by Alexander Frazer, Enos Prather, and Nelson Prather, on E. Ludlow, esq., cashier Ohio Life Insurance and Trust Company, New York, payable ninety days after date to the order of the defendant, and indorsed by the defendant.

8th. A bill dated at Chillicothe, Ohio, May 2, 1857, for $1,033 $\frac{86}{100}$, drawn by M. S. Cook and W. Cunningham, on E. Ludlow, cashier Ohio Life Insurance and Trust Company, New York, payable four months after date to the order of the defendant, and indorsed by the defendant.

9th. A bill dated at Chillicothe, Ohio, May 7th, 1857, for $5,000, drawn by A. McDonald, Enos Prather, and Nelson Prather, on E. Ludlow, esq., cashier Ohio Life Insurance and Trust Company, New York, payable four months after date to the order of the defendant, and indorsed by the defendant.

10th. A bill dated at Chillicothe, Ohio, June 9th, 1857, for $5,500\frac{00}{100}$, drawn by R. R. Seymour, F. G. Seymour, and A. W. Seymour, on E. Ludlow, esq., cashier Ohio Life Insurance and Trust Company, New York, payable ninety days after date to the order of the defendant, and indorsed by the defendant.

4 11th. A bill dated at Chillicothe, Ohio, April 23, 1857, for $5,000\frac{00}{100}$, drawn by A. McDonald, Enos Prather, and Nelson Prather, on E. Ludlow, esq., cashier Ohio Life Insurance and Trust Company, New York, payable four months after date to the order of the defendant, and indorsed by the defendant.

12th. A bill dated at Chillicothe, Ohio, June 15th, 1857, for $1,200\frac{00}{100}$, drawn by A. R. McGill, Jesse Pancake, jr., and Jacob Pancake, on E. Ludlow, esq., cashier Ohio Life Insurance and Trust Company, New York, payable ninety days after date to the order of the defendant, and indorsed by the defendant.

13th. A bill dated at Chillicothe, Ohio, May 30th, 1857, for $5,000\frac{00}{100}$, drawn by Nelson Prather, John Pancake, and John P. Bayer, on E. Ludlow, esq., cashier Ohio Life Insurance and Trust Company, New York, payable ninety days after date to the order of the defendant, and indorsed by the defendant.

14th. A bill dated at Chillicothe, Ohio, June 20th, 1857, for $2,000\frac{00}{100}$, drawn by Wm. H. Douglass, jr., Isaiah Ingham, and John Foster, on E. Ludlow, esq., cashier Ohio Life Insurance and Trust Company, New York, payable ninety days after date to the order of the defendant, and indorsed by the defendant.

Also for money paid and advanced and had and received.

HENRY STANBERRY,
Attorney for Plaintiffs.

And also the following indorsement, to wit:

Security for costs.

I, Julius J. Wood, acknowledge myself security for all costs for which the plaintiffs may be liable in this suit.

JULIUS J. WOOD.
By WM. MINER,
Clerk U. S. Circuit Court, his attorney in fact.

Marshal's return.

And afterwards, to wit, on the third Tuesday of December, A. D. 1857, came the said marshal to whom said writ of summons was in manner and form aforesaid directed, and returned the same into the clerk's office of said court with his proceedings indorsed thereon, in the words and figures following, to wit: Agreeably to the command of this writ, I served the same on Henry Massie, president of the

5 within named bank, personally, Dec. 10, 1857, by delivering to him a true copy of the same.

LEWIS W. SIFFORD,
U. S. Marshal.
Per GEORGE S. BAKER, *Deputy.*

Entry.

And on the 13th day of January, A. D. 1858, the following entry was made upon the journal of said court, to wit:

"On motion of the plaintiffs, by their attorneys, the default for declaration herein is set aside, and leave given the plaintiffs to declare, and declaration filed; and thereupon, on motion, leave is given the defendant to plead by the first day of March next, and this case is continued."

Declaration.

Said declaration in this cause is in the words and figures following, to wit:

The circuit court of the United States for the southern district of Ohio, of October term, in the year of our Lord one thousand eight hundred and fifty-seven.

James Lee and Benjamin C. Lee, who are residents and citizens of the State of New York, and partners, doing business in that State under the style of James Lee & Co., complain of the Chillicothe branch of the State Bank of Ohio, which is a corporation of the State of Ohio, having its office at Chillicothe, in said State of Ohio, and within the district aforesaid; for that whereas Alexander McDonald, Enos Prather, and Nelson Prather, on the 29th day of April, A. D. 1857, at Chillicothe, Ohio, in said State of Ohio, to wit, in the district aforesaid, made their certain bill of exchange in writing, bearing date a certain day and year therein mentioned, to wit, the day and year last aforesaid, and thereby then and there requested one Edwin Ludlow, (by the name and style of E. Ludlow, cas.,) the said Edwin Ludlow then and still being a resident and citizen of the State of New York, four months after the date thereof, to pay to the order of defendant, by the name and style of James B. Scott, its cashier, the sum of fifty hundred dollars, for value received, acceptance waived; and the said defendant then and there, by said James B. Scott, its cashier, then and there for that purpose duly authorized, indorsed and delivered to the said Edwin Ludlow, cashier, the said bill of exchange, the said Edwin Ludlow then being a resident and citizen of said State of New York, who then and
6 there, to wit, at the State of New York aforesaid, indorsed and delivered the same to the said plaintiffs; and the said plaintiffs aver, that afterwards, when the said bill of exchange became due, to wit, on the first day of September, A. D. 1857, at the city of New York, in said State of New York, the said bill of exchange was presented and shown for payment thereof to said Edwin Ludlow, and payment of said sum of money in said bill of exchange specified was then and there duly required of said Edwin Ludlow, but that neither the said Alexander McDonald, Enos Prather, or Nelson Prather, nor the said Edwin Ludlow, cashier, nor the said defendant, nor any person or persons on their behalf, or on behalf of either of them, did or would, at the time the said bill of exchange was so presented and shown for the payment thereof as aforesaid, or at any time before or

afterwards, pay the said sum of money therein specified, or any part thereof, but then and there wholly neglected and refused so to do; whereupon the said plaintiffs afterwards, to wit, on the said first day of September, A. D. 1857, when said bill of exchange became due as aforesaid, at the city of New York, in said State of New York, caused said bill of exchange to be duly protested for the said non-payment thereof; of all which said premises the said defendant afterwards, to wit, on the day and year last aforesaid, at the State of Ohio, had notice; by means whereof the said defendant then and there became liable to pay the said plaintiffs the said sum of fifty hundred dollars in said bill of exchange specified, together with three hundred dollars damages, being six per centum on the said sum of money in said bill of exchange specified, given upon the protest thereof by the statute
7 of the said State of Ohio in such case made and provided; and being so liable, the said defendant, in consideration of the premises, afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, and within the district aforesaid, undertook and faithfully promised the plaintiffs to pay to them on request the said several sums of money; yet the said defendant has not paid said several sums of money, or either of them or any part thereof, although often requested so to do.

2. And whereas, also, William A. Jones and Clark Foster, partners, doing business under the name of Jones & Foster, Thomas C. Foster and William Jones, on the twenty-eighth day of May, A. D. 1857, at Chillicothe, Ohio, in said State of Ohio, to wit, in the district aforesaid, made their certain bill of exchange in writing, bearing date a certain day and year therein mentioned, to wit, the day and year last aforesaid, and thereby then and there requested one Edwin Ludlow, (under the name and style of E. Ludlow, cashier Ohio Life Insurance and Trust Company,) the said Edwin Ludlow then and still being a resident and citizen of the State of New York, ninety days after the date thereof, to pay to the order of the defendant, by the name and style of its cashier, James B. Scott, the sum of four thousand dollars for value received, acceptance waived; and the said defendant then and there, by the said James B. Scott, its cashier, then and there for that purpose duly authorized, indorsed and delivered to the said Edwin Ludlow, cashier, the said bill of exchange, the said Edwin Ludlow then being a citizen and resident of said State of New York, who then and there, to wit,
8 at the State of New York aforesaid, indorsed and delivered the same to the said plaintiffs; and the said plaintiffs aver, that afterwards, when the said bill of exchange became due, to wit, on the twenty-ninth day of August, A. D. 1857, at the city of New York, in the said State of New York, the said bill of exchange was presented and shown for payment thereof to the said Edwin Ludlow, and payment of said sum of money in said bill of exchange specified was then and there duly required of said Edwin Ludlow, but that neither the said Jones & Foster, Thomas C. Foster, William Jones, nor the said Edwin Ludlow, cashier, nor the said defendant, nor any person or persons on their behalf or on behalf of either of them, did or would, at the time the said bill of exchange was so presented and

shown for payment thereof as aforesaid, or at any time before or afterwards, pay the said sum of money therein specified, or any part thereof, but then and there wholly neglected and refused so to do; whereupon the said plaintiffs afterwards, to wit, on the said twenty-ninth day of August, A. D. 1857, when said bill of exchange became due as aforesaid, at the city of New York, in the said State of New York, caused said bill of exchange to be duly protested for the said non-payment thereof, of all which said premises the said defendant afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, had notice, by means whereof the said defendant then and there became liable to pay to the said plaintiffs the said sum of four thousand dollars in said bill of exchange specified, together with two hundred and forty dollars damages, being six per centum on the said sum
9 of money in said bill of exchange specified, given upon the protest thereof, by the statute of the said State of Ohio, in such case made and provided; and being so liable, the said defendant, in consideration of the premises, afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, and within the district aforesaid, undertook and faithfully promised the plaintiffs to pay to them, on request, the said several sums of money; yet the said defendant has not paid said several sums of money or either of them, or any part thereof, although often requested so to do.

3. And whereas, also, Aaron W. Seymour, Felix G. Seymour, and Richard R. Seymour, on the twelfth day of June, A. D. 1857, at Chillicothe, Ohio, in said State of Ohio, to wit, in the district aforesaid, made their certain bill of exchange in writing, bearing date a certain day and year therein mentioned, to wit, the day and year last aforesaid, and thereby then and there requested one Edwin Ludlow, (by the name and style of E. Ludlow, cas. Ohio Life Ins. & Trust Co.,) the said Edwin Ludlow then and still being a resident and citizen of the State of New York, ninety days after the date thereof, to pay to the order of the defendant, by the name and style of James B. Scott, its cashier, the sum of thirty-one hundred dollars, for value received, acceptance waived; and the said defendant then and there, by said James B. Scott, its cashier, then and there, for that purpose duly authorized, indorsed and delivered to the said Edwin Ludlow, cashier, the said bill of exchange, the said Edwin Ludlow then
10 being a resident and citizen of said State of New York, who then and there, to wit, at the State of New York aforesaid, indorsed and delivered the same to the said plaintiffs; and the said plaintiffs aver, that afterwards, when the said bill of exchange became due, to wit, on the 13th day of September, A. D. 1857, at the city of New York, in the said State of New York, the said bill of exchange was presented and shown for payment thereof to said Edwin Ludlow, and payment of said sum of money in said bill of exchange specified was then and there duly required of said Edwin Ludlow, but that neither the said Aaron W. Seymour, Felix G. Seymour, nor Richard R. Seymour, nor the said Edwin Ludlow, cashier, nor the said defendant, nor any person or persons on their behalf or on behalf of either of them, did, or would, at the time the said bill of exchange

was so presented and shown for payment thereof, as aforesaid, or at any time before or afterwards, pay the said sum of money therein specified or any part thereof, but then and there wholly neglected and refused so to do; whereupon the said plaintiffs afterwards, to wit, on the said thirteenth day of September, A. D. 1857, when said bill of exchange became due as aforesaid, at the city of New York, in the said State of New York, caused said bill of exchange to be duly protested for the said non-payment thereof, of all which said premises the said defendant afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, had notice, by means whereof the said defendant then and there became liable to pay to the
11 said plaintiffs the said sum of thirty-one hundred dollars, in said bill of exchange specified, together with one hundred and eighty-six dollars damages, being six per centum on the said sum of money in said bill of exchange specified, given upon the protest thereof, by the statute of the said State of Ohio in such case made and provided; and being so liable, the said defendant, in consideration of the premises, afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, and within the district aforesaid, undertook and faithfully promised the plaintiff to pay to them, on request, the said several sums of money; yet the said defendant has not paid the said several sums of money or either of them, or any part thereof, although often requested so to do.

4. And whereas, also, James Jones, Isaac Moore, and Henry Blair, on the twelfth day of June, A. D. 1857, at Chillicothe, Ohio, in said State of Ohio, to wit, in the district aforesaid, made their certain bill of exchange in writing, bearing date a certain day and year therein mentioned, to wit, the day and year last aforesaid, and thereby then and there requested one Edwin Ludlow, by the name and style of E. Ludlow, cas. Ohio Life Ins. & Trust Co., the said Edwin Ludlow then and still being a resident and citizen of the State of New York, ninety days after the date thereof, to pay to the order of defendant, by the name and style of James B. Scott, its cashier, the sum of forty
12 hundred dollars for value received, acceptance waived; and the said defendant then and there, by said James B. Scott, its cashier, then and there for that purpose duly authorized, indorsed and delivered to the said Edwin Ludlow, cashier, the said bill of exchange, the said Edwin Ludlow then being a resident and citizen of said State of New York, who then and there, to wit, at the State of New York aforesaid, indorsed and delivered the same to the said plaintiffs; and the said plaintiffs aver, that afterwards, when the said bill of exchange became due, to wit, on the 13th day of September, A. D. 1857, at the city of New York, in the said State of New York, the said bill of exchange was presented and shown for payment thereof to said Edwin Ludlow, and payment of said sum of money in said bill of exchange specified was then and there duly required of said Edwin Ludlow, but that neither the said James Jones, Isaac Moor orHenry Blain, nor the said Edwin Ludlow, cashier, nor the said defendant, nor any person or persons on their behalf, or on behalf of either of them, did or would, at the time the said bill of exchange was so presented and

shown for payment thereof, as aforesaid, or at any time before or afterwards, pay the said sum of money therein specified, or any part thereof, but then and there wholly neglected and refused so to do; whereupon the said plaintiffs afterwards, to wit, on the said 13th day of September, A. D. 1857, when said bill of exchange became due, as aforesaid, at the city of New York, in the said State of New York, caused said bill of exchange to be duly protested for the said non-payment thereof, of all which said
13 premises the said defendant afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, had notice, by means whereof the said defendant then and there became liable to pay to the said plaintiffs the sum of forty hundred dollars, in said bill of exchange specified, together with two hundred and forty dollars damages, being six per centum on the said sum of money in said bill of exchange specified, given upon the protest thereof by the statute of the said State of Ohio in such case made and provided; and, being so liable, the said defendant, in consideration of the premises afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, and within the district aforesaid, undertook and faithfully promised the plaintiffs to pay to them, on request, the said several sums of money; yet the said defendant has not paid said several sums of money, or either of them, or any part thereof, although often requested so to do.

5. And whereas, also, A. E. Bush & Co., Aaron Stookey, and Solomon W. Bush and Jacob Bush, partners, doing business under the name of S. W. Bush & Co., on the 22d day of June, A. D. 1857, at Chillicothe, O., in said state of Ohio, to wit, in the district aforesaid, made their certain bill of exchange in writing, bearing date a certain day and year therein mentioned, to wit, the day and year last aforesaid, and thereby, then and there, requested one Edwin Ludlow, by the name and style of J. Ludlow, cash.
14 Ohio Life Ins. and Trust. Co., the said Edwin Ludlow then and still being a resident and citizen of the State of New York, eighty days after the date thereof, to pay to the order of the defendant, by the name and style of James B. Scott, its cashier, the sum of one thousand dollars, for value received, acceptance waived; and the said defendant, then and there, by said James B. Scott, its cashier, then and there, for that purpose, duly authorized, indorsed and delivered to the said Edwin Ludlow, cashier, the said bill of exchange, the said Edwin Ludlow then being a resident and citizen of said State of New York, who then and there, to wit, at the State of New York aforesaid, indorsed and delivered the same to the said plaintiffs; and the said plaintiffs aver that afterwards, when the said bill of exchange became due, to wit, on the 13th day of September, A. D. 1857, at the city of New York, in said State of New York, the said bill of exchange was presented and shown for payment thereof, to said Edwin Ludlow, and payment of said sum of money, in said bill of exchange specified, was then and there duly required of said Edwin Ludlow, but that neither the said A. E. Bush & Co., Aaron Stookey, or S. W. Bush & Co., nor the said Edwin Ludlow, cashier, nor the said defendant, nor any person or persons on their behalf, or on behalf of either of them, did

or would, at the time the said bill of exchange was so presented and shown for payment thereof, as aforesaid, or at any time before
15 or afterwards, pay the said sum of money therein specified, or any part thereof, but then and there wholly neglected and refused so to do; whereupon the said plaintiffs afterwards, to wit, on the said 13th day of September, A. D. 1857, when said bill of exchange became due, as aforesaid, at the city of New York, in the said State of New York, caused said bill of exchange to be duly protested for the said non-payment thereof; of all which said premises the said defendant afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, had notice, by means whereof the said defendant then and there became liable to pay to the said plaintiff the said sum of one thousand dollars, in said bill of exchange specified, together with sixty dollars damages, being six per centum on the said sum of money in said bill of exchange specified, given upon the protest thereof by the statute of the said State of Ohio, in such case made and provided. And being so liable, the said defendant, in consideration of the premises, afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, and within the district aforesaid, undertook and faithfully promised the plaintiffs to pay to them, on request, the said several sums of money; yet the said defendant has not paid said several sums of money, or either of them, or any part thereof, although often requested so to do.

6. And whereas, also, George Wood, John Warfield, and
16 David Adams, on the 4 day of May, A. D. 1857, at Chillicothe, O., in said State ofOhio, to wit, in the district aforesaid, made their certain bill of exchange in writing, bearing date a certain day and year therein mentioned, to wit, the day and year last aforesaid, and thereby then and there requested one Edwin Ludlow, by the name and style of E. Ludlow, cas. Ohio Life Ins. and Trust. Co., the said Edwin Ludlow then and still being a resident and citizen of the State of New York, four months after the date thereof, to pay to the order of the defendant, by the name and style of James B. Scott, its cashier, the sum of fifty hundred dollars, for value received, acceptance waived. And the said defendant then and there, by said James B. Scott, its cashier, then and there for that purpose duly authorized, indorsed and delivered to the said Edwin Ludlow, cashier, the said bill of exchange, the said Edwin Ludlow then being a resident and citizen of said State of New York, who then and there, to wit, at the State of New York aforesaid, indorsed and delivered the same to the said plaintiffs. And the said plaintiffs aver that afterwards, when the said bill of exchange became due, to wit, on the 7th day of September, A. D. 1857, at the city of New York, in the said State of New York, the said bill of exchange was presented and shown for payment thereof to said Edwin Ludlow, and payment of said sum of money, in said bill of exchange specified, was then and there duly required of said Edwin Ludlow; but that neither the
17 said George Wood, John Warfield, or David Adams, nor the said Edwin Ludlow, cashier, nor the said defendant, nor any person or persons on their behalf, or on behalf of either of them, did

or would, at the time the said bill of exchange was so presented and shown for payment thereof, as aforesaid, or at any time before or afterwards, pay the said sum of money therein specified, or any part thereof, but then and there wholly neglected and refused so to do; whereupon the said plaintiff afterwards, to wit, on the said 7th day of September, A. D. 1857, when said bill of exchange became due, as aforesaid, at the city of New York, in the said State of New York, caused said bill of exchange to be duly protested for the said nonpayment thereof; of all which said premises the said defendant afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, had notice, by means whereof the said defendant then and there became liable to pay to said plaintiffs the said sum of fifty hundred dollars, in said bill of exchange specified, together with three hundred dollars damages, being six per centum on the said sum of money in said bill of exchange specified, given upon the protest thereof by the statute of the said State of Ohio in such case made and provided. And being so liable, the said defendant, in consideration of the premises, afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, and within the district aforesaid, undertook and faithfully promised the plaintiffs to pay to them,
18 on request, the said several sums of money; yet the said defendant has not paid said several sums of money, or either of them, or any part thereof, although often requested so to do.

7. And whereas also, Alexander Fraser, Enos Prather, and Nelson Prather, on the 2d day of June, A. D. 1857, at Chillicothe, O., in said State of Ohio, to wit, in the district aforesaid, made their certain bill of exchange in writing, bearing date a certain day and year therein mentioned, to wit, the day and year last aforesaid, and thereby then and there requested one Edwin Ludlow, by the name and style of E. Ludlow, cash. Ohio Life Ins. and Trust Co., the said Edwin Ludlow, then and still being a resident and citizen of the State of New York, ninety days after the date thereof, to pay to the order of the defendant, by the name and style of James B. Scott, its cashier, the sum of fifty hundred dollars, for value received, acceptance waived. And the said defendant then and there, by said James B. Scott, its cashier, then and there for that purpose duly authorized, indorsed and delivered to the said Edwin Ludlow, cashier, the said bill of exchange, the said Edwin Ludlow then being a resident and citizen of said State of New York, who then and there, to wit, at the State of New York aforesaid, indorsed and delivered the same to the said plaintiffs. And the said plaintiffs aver that afterwards, when the said bill of exchange became due, to wit, on the 3d day of September, A. D. 1857, at the city of New York, in the
19 said State of New York, the said bill of exchange was presented and shown for payment thereof to said Edwin Ludlow, and payment of said sum of money, in said bill of exchange specified, was then and there duly required of said Edwin Ludlow, but that neither the said Alexander Fraser, Enos Prather, or Nelson Prather, nor the said Edwin Ludlow, cashier, nor the said defendant, nor any person or persons on their behalf, or on behalf of either of them, did or would, at the time the said bill of exchange was

so presented or shown for payment thereof, as aforesaid, or at any time before or afterwards, pay the said sum of money therein specified, or any part thereof, but then and there wholly neglected and refused so to do; whereupon the said plaintiffs afterwards, to wit, on the said 3d day of September, A. D. 1857, when said bill of exchange became due, as aforesaid, at the city of New York, in the said State of New York, caused said bill of exchange to be duly protested for the said non-payment thereof; of all which said premises the said defendant afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, had notice, by means whereof the said defendant then and there became liable to pay to the said plaintiffs the said sum of fifty hundred dollars, in said bill of exchange specified, together with three hundred dollars damages, being six per centum on the said sum of money in said bill of exchange specified, given upon the
20 protest thereof by the statute of the said State of Ohio in such case made and provided. And being so liable, the said defendant, in consideration of the premises, afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, and within the district aforesaid, undertook and faithfully promised the plaintiffs to pay to them, on request, the said several sums of money; yet the said defendant has not paid said several sums of money, or either of them, or any part thereof, although often requested so to do.

8. And whereas, also, Matthew S. Cook and William Cunningham, on the 2d day of May, A. D. 1857, at Chillicothe, O., in said State of Ohio, to wit, in the district aforesaid, made their certain bill of exchange in writing, bearing date a certain day and year therein mentioned, to wit, the day and year last aforesaid, and thereby then and there requested one Edwin Ludlow, by the name and style of E. Ludlow, cas. Ohio Life Ins. and Trust Co., the said Edwin Ludlow then and still being a resident and citizen of the State of New York, four months after the date thereof, to pay to the order of the defendant, by the name and style of James B. Scott, its cashier, the sum of ten hundred and thirty-three $\frac{86}{100}$ dollars, for value received, acceptance waived. And the said defendant then and there, by said James B. Scott, its cashier, then and there for that purpose duly authorized, indorsed and delivered to the said Edwin Ludlow, cashier,
21 the said bill of exchange, the said Edwin Ludlow then being a resident and citizen of said State of New York, who then and there, to wit, at the State of New York aforesaid, indorsed and delivered the same to the said plaintiffs. And the said plaintiffs aver that afterwards, when the said bill of exchange became due, to wit, on the 5th day of September, A. D. 1857, at the city of New York, in said State of New York, the said bill of exchange was presented and shown for payment thereof to said Edwin Ludlow, and payment of said sum of money, in said bill of exchange specified, was then and there duly required of said Edwin Ludlow, but that neither the said Matthew S. Cook or William Cunningham, nor the said Edwin Ludlow, cashier, nor the said defendant, nor any person or persons on their behalf, or on behalf of either of them, did or would, at the time the said bill of exchange was so presented and shown for payment

thereof, as aforesaid, or at any time before or afterwards, pay the said sum of money therein specified, or any part thereof, but then and there wholly neglected and refused so to do; whereupon the said plaintiff afterwards, to wit, on the said 5th day of September, A. D. 1857, when said bill of exchange became due, as aforesaid, at the city of New York, in the said State of New York, caused the said bill of exchange to be duly protested for the said non-payment thereof; of all which said premises the said defendant after-
22 wards, to wit, on the day and year last aforesaid, at the said State of Ohio, had notice, by means whereof the said defendant then and there became liable to pay to the said plaintiffs the said sum of ten hundred and thirty-three $\frac{86}{100}$ dollars, in said bill of exchange specified, together with sixty-one $\frac{93}{100}$ dollars damages, being six per centum on the said sum of money in said bill of exchange specified, given upon the protest thereof by the statute of the said State of Ohio in such case made and provided. And being so liable, the said defendant, in consideration of the premises, afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, and within the district aforesaid, undertook and faithfully promised the plaintiffs to pay to them, on request, the said several sums of money; yet the said defendant has not paid said several sums of money, or either of them, or any part thereof, although often requested so to do.

9. And whereas, also, Alexander McDonald, Enos Prather, and Nelson Prather, on the 7th day of May, A. D. 1857, at Chillicothe, O., in said State of Ohio, to wit, in the district aforesaid, made their certain bill of exchange in writing, bearing date a certain day and year therein mentioned, to wit, the day and year last aforesaid, and thereby then and there requested one Edwin Ludlow, by
23 the name and style of E. Ludlow, cash. Ohio Life Ins. and Trust Co., the said Edwin Ludlow then and still being a resident and citizen of the State of New York, four months after the date thereof, to pay to the order of defendant, by the name and style of James B. Scott, its cashier, the sum of fifty hundred dollars, for value received, acceptance waived. And the said defendant then and there, by said James B. Scott, its cashier, then and there for that purpose duly authorized, indorsed and delivered to the said Edwin Ludlow, cashier, the said bill of exchange, the said Edwin Ludlow then being a resident and citizen of said State of New York, who then and there, to wit, at the State of New York aforesaid, indorsed and delivered the same to the said plaintiffs. And the said plaintiffs aver that afterwards, when the said bill of exchange became due, to wit, on the 10th day of September, A. D. 1857, at the city of New York, in said State of New York, the said bill of exchange was presented and shown for payment thereof to said Edwin Ludlow, and payment of said sum of money, in said bill of exchange specified, was then and there duly required of said Edwin Ludlow, but neither the said Alexander McDonald, Enos Prather, or Nelson Prather, nor the said Edwin Ludlow, cashier, nor the said defendant, nor any person or persons on their behalf, or on behalf of either of them, did or

would, at the time the said bill of exchange was so presented
24 and shown for payment thereof, as aforesaid, or at any time before or afterwards, pay the said sum of money therein specified, or any part thereof, but then and there wholly neglected and refused so to do: whereupon the said plaintiffs afterwards, to wit, on the said 10th day of September, A. D. 1857, when said bill of exchange became due, as aforesaid, at the city of New York, in the said State of New York, caused said bill of exchange to be duly protested for the said non-payment thereof; of all which said premises the said defendant afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, had notice, by means whereof the said defendant then and there became liable to pay to the said plaintiffs the said sum of fifty hundred dollars, in said bill of exchange specified, together with three hundred dollars damages, being six per centum on the said sum of money in said bill of exchange specified, given upon the protest thereof by the statute of the said State of Ohio in such case made and provided. And being so liable, the said defendant, in consideration of the premises, afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, and within the district aforesaid, undertook and faithfully promised the plaintiffs to pay to them, on request,
25 the said several sums of money; yet the said defendant has not paid said several sums of money, or either of them, or any part thereof, although often requested so to do.

10. And whereas, also, Richard R. Seymour, Felix G. Seymour, and Aaron W. Seymour, on the 9th day of June A. D. 1857, at Chillicothe, O., in said State of Ohio, to wit, in the district aforesaid, made their certain bill of exchange in writing, bearing date a certain day and year therein mentioned, to wit, the day and year last aforesaid, and thereby then and there requested one Edwin Ludlow, by the name and style of E. Ludlow, cash. Ohio Life Insurance and Trust Co., the said Edwin Ludlow then and still being a resident and citizen of the State of New York, ninety days after the date thereof, to pay to the order of the defendant, by the name and style James B. Scott, its cashier, the sum of fifty-five hundred dollars, for value received, acceptance waived. And the said defendant, then and there by said James B. Scott, its cashier, then and there for that purpose duly authorized, indorsed and delivered to the said Edwin Ludlow, cashier, the said bill of exchange, the said Edwin Ludlow then being a resident and citizen of said State of New York, who then and there, to wit, at the State of New York, aforesaid, indorsed
26 and delivered the same to the said plaintiffs. And the said plaintiffs aver that afterwards, when the said bill of exchange became due, to wit, on the 10th day of September, A. D. 1857, at the city of New York, in the said State of New York, the said bill of exchange was presented and shown for payment thereof to the said Edwin Ludlow and payment of said sum of money, in said bill of exchange specified, was then and there duly required of said Edwin Ludlow, but that neither the said Richard R. Seymour, Felix G. Seymour, or Aaron W. Seymour, nor the said Edwin Ludlow, cashier, nor the said defendant, nor any person or persons on their behalf, or on behalf of either

of them, did or would, at the time the said bill of exchange was so presented and shown for payment thereof, as aforesaid, or at any time before or afterwards, pay the said sum of money therein specified, or any part thereof, but then and there wholly neglected and refused so to do; whereupon the said plaintiffs afterwards, to wit, on the said 10th day of September, A. D. 1857, when said bill of exchange became due, as aforesaid, at the city of New York, in the said State of New York, caused said bill of exchange to be duly protested for the said non-payment thereof; of all which said premises the said defendant afterwards, to wit, on the day and year last aforesaid, at the said
27 State of Ohio, had notice, by means whereof the said defendant then and there became liable to pay to the said plaintiffs the said sum of fifty-five hundred dollars, in said bill of exchange specified, together with three hundred and thirty dollars damages, being six per centum on the said sum of money in said bill of exchange specified, given upon the protest thereof by the statute of the said State of Ohio in such case made and provided. And being so liable, the said defendant, in consideration of the premises, afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, and within the district aforesaid, undertook and faithfully promised the plaintiffs to pay to them, on request, the said several sums of money; yet the said defendant has not paid said several sums of money, or either of them, or any part thereof, although often requested so to do.

11. And whereas, also, Alexander McDonald, Enos Prather, and Nelson Prather, on the 23d day of April, A. D. 1857, at Chillicothe, O., in said State of Ohio, to wit, in the district aforesaid, made their certain bill of exchange in writing, bearing date a certain day and year therein mentioned, to wit, the day and year last aforesaid, and thereby then and there requested one Edwin Ludlow, by the name and style of E. Ludlow, cash. Ohio Life Ins. and Trust Co.,
28 the said Edwin Ludlow then and still being a resident and citizen of the State of New York, four months after the date thereof, to pay to the order of the defendant, by the name and style of James B. Scott, its cashier, the sum of fifty hundred dollars, for value received, acceptance waived. And the said defendant then and there, by said James B. Scott, its cashier, then and there for that purpose duly authorized, indorsed and delivered to the said Edwin Ludlow, cashier, the said bill of exchange, the said Edwin Ludlow then being a resident and citizen of said State of New York, who then and there, to wit, at the State of New York aforesaid, indorsed and delivered the same to the said plaintiffs. And the said plaintiffs aver that afterwards, when the said bill of exchange became due, to wit, on the 26th day of August, A. D. 1857, at the city of New York, in said State of New York, the said bill of exchange was presented and shown for payment thereof to said Edwin Ludlow, and payment of said sum of money, in said bill of exchange specified, was then and there duly required of said Edwin Ludlow, but that neither the said Alexander McDonald, Enos Prather, or Nelson Prather, nor the said Edwin Ludlow, cashier, nor the said defendant, nor any person or persons on their behalf, or on behalf of either of them,

did or would at the time the said bill of exchange was
29 so presented and shown for payment thereof, as aforesaid, or
at any time before or afterwards, pay the said sum of money therein specified, or any part thereof, but then and there wholly neglected and refused so to do; whereupon the said plaintiffs afterwards, to wit, on the said 26th day of August, A. D. 1857, when said bill of exchange became due, as aforesaid, at the city of New York, in the said State of New York, caused said bill of exchange to be duly protested for the said non-payment thereof; of all which said premises the said defendant afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, had notice, by means whereof the said defendant then and there became liable to pay to the said plaintiffs the said sum of fifty hundred dollars, in said bill of exchange specified, together with three hundred dollars damages, being six per centum on the said sum of money in said bill of exchange specified, given upon the protest thereof by the statute of the said State of Ohio in such case made and provided. And being so liable, the said defendant, in consideration of the premises, afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, and within
the district aforesaid, undertook and faithfully promised the
30 plaintiffs to pay to them, on request the said several sums of money; yet the said defendant has not paid said several sums of money, or either of them, or any part thereof, although often requested so to do.

12. And whereas, also, Andrew R. McNeill, Jesse Pancake, jr., and Jacob Pancake, on the 15th day of June, A. D. 1857, at Chillicothe, O., in said State of Ohio, to wit, in the district aforesaid, made their certain bill of exchange in writing, bearing date a certain day and year therein mentioned, to wit, the day and year last aforesaid, and thereby then and there requested one Edwin Ludlow, by the name and style of E. Ludlow, cas. Ohio Life Ins. and Trust Co., the said Edwin Ludlow then and still being a resident and citizen of the State of New York, ninety days after the date thereof, to pay to the order of the defendant, by the name and style of James B. Scott, its cashier, the sum of twelve hundred dollars, for value received, acceptance waived. And the said defendant then and there, by said James B. Scott, its cashier, then and there for that purpose duly authorized, indorsed and delivered to the said Edwin Ludlow, cashier, the said bill of exchange, the said Edwin Ludlow then being a resident and citizen of said State of New York, who then and there, to wit, at the State of New York aforesaid, indorsed and delivered the same to the said plaintiffs. And the said plaintiffs aver that afterwards, when
the said bill of exchange became due, to wit, on the 16th day
31 of September, A. D. 1857, at New York city, in the said State of New York, the said bill of exchange was presented and shown for payment thereof to said Edwin Ludlow, and payment of said sum of money, in said bill of exchange specified, was then and there duly required of said Edwin Ludlow, but that neither the said Andrew R. McNeill, Jesse Pancake, jr., or Jacob Pancake, nor the said Edwin Ludlow, cashier, nor the said defendant, nor any per-

sons or persons on their behalf, or on behalf of either of them, did or would, at the time the said bill of exchange was so presented and shown for payment thereof, as aforesaid, or at any time before or afterwards, pay the said sum of money therein specified, or any part thereof, but then and there wholly neglected and refused so to do; whereupon the said plaintiffs afterwards, to wit, on the said 16th day of September, A. D. 1857, when said bill of exchange became due, as aforesaid, at the city of New York, in the said State of New York, caused said bill of exchange to be duly protested for the said non-payment thereof; of all which said premises the said defendant, afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, had notice, by means whereof the said defendant then and there became liable to pay to the said plaintiffs the said sum of twelve hundred dollars, in said bill of exchange specified, together with seventy-two dollars damages, being six per centum on the said
32 sum of money in said bill of exchange specified, given upon the protest thereof, by the statute of the said State of Ohio in such case made and provided. And being so liable, the said defendant, in consideration of the premises, afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, and within the district aforesaid, undertook and faithfully promised the plaintiffs to pay to them, on request, the said several sums of money; yet the said defendant has not paid said several sums of money, or either of them, or any part thereof, although often requested so to do.

13. And whereas, also, Nelson Prather, John Pancake, and John P. Barger, on the 30th day of May, A. D. 1857, at Chillicothe, O., in said State of Ohio, to wit, in the district aforesaid, made their certain bill of exchange in writing, bearing date a certain day and year therein mentioned, to wit, the day and year last aforesaid, and thereby then and there requested one Edwin Ludlow, by the name and style of E. Ludlow, cash. Ohio Life Ins. and Trust Co., the said Edwin Ludlow then and still being a resident and citizen of the State of New York, ninety days after the date thereof, to pay to the order of the defendant, by the name and style of James B. Scott, its cashier, the sum of fifty hundred dollars, for value received, acceptance waived. And the said defendant then and there, by said James B. Scott, its cashier, then and there for that
33 purpose duly authorized, indorsed and delivered to the said Edwin Ludlow, cashier, the said bill of exchange, the said Edwin Ludlow then being a resident and citizen of said State of New York, who then and there, to wit, at the State of New York aforesaid, indorsed and delivered the same to the said plaintiffs. And the said plaintiffs aver that afterwards, when the said bill of exchange became due, to wit, on the 31st day of August, A. D. 1857, at the city of New York, in said State of New York, the said bill of exchange was presented and shown for payment thereof to said Edwin Ludlow, and payment of said sum of money, in said bill of exchange specified, was then and there duly required of said Edwin Ludlow, but that neither the said Nelson Prather, John Pancake, or John P. Barger, nor the said Edwin Ludlow, cashier, nor the said defendant, nor any

person or persons on their behalf, or on behalf of either of them, did or would, at the time the said bill of exchange was so presented and shown for payment thereof as aforesaid, or at any time before or afterwards, pay the said sum of money therein specified, or any part thereof, but then and there wholly neglected and refused so to do, whereupon the said plaintiffs afterwards, to wit, on the said 31st day of August, A. D. 1857, when the said bill of exchange became due as aforesaid, at the city of New York, in the said State of New
34 York, caused said bill of exchange to be duly protested for said non-payment thereof, of all which said premises the said defendant afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, had notice; by means whereof the said defendant then and there became liable to pay to the said plaintiffs the said sum of fifty hundred dollars, in said bill of exchange specified, together with three hundred dollars damages, being six per centum on the said sum of money in said bill of exchange specified, given upon the protest thereof, by the statute of the said State of Ohio in such case made and provided; and being so liable, the said defendant, in consideration of the premises, afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, and within the district aforesaid, undertook and faithfully promised the plaintiffs to pay to them, on request, the said several sums of money; yet the said defendant has not paid said several sums of money, or either of them, or any part thereof, although often requested so to do.

14. And whereas, also, William H. Douglas, jr., Isaiah Ingham, and John Foster, on the 20th day of June, A. D. 1857, at Chillicothe, O., in said State of Ohio, to wit, in the district aforesaid, made their certain bill of exchange in writing, bearing date a certain day and year therein mentioned, to wit, the day and year last aforesaid, and thereby, then and there requested one Edmund
35 Ludlow, by the name and style of E. Ludlow, Cas. Ohio Life Ins. & Trust Co., the said Edwin Ludlow then and still being a resident and citizen of the State of New York, ninety days after the date thereof, to pay to the order of the defendant, by the name and style of James B. Scott, its cashier, the sum of twenty hundred dollars, for value received—acceptance waived; and the said defendant then and there, by the said James B. Scott, its cashier, then and there for that purpose duly authorized, indorsed and delivered to the said Edwin Ludlow, cashier, the said bill of exchange, the said Edwin Ludlow then being a resident and citizen of said State of New York, who then and there, to wit, at the State of New York, aforesaid, indorsed and delivered the same to the said plaintiffs; and the said plaintiffs aver that afterwards, when the said bill of exchange became due, to wit, on the 21st day of September, A. D. 1857, at the city of New York, in the said State of New York, the said bill of exchange was presented and shown for payment thereof to said Edwin Ludlow, and payment of said sum of money in said bill of exchange specified was then and there duly required of said Edwin Ludlow, but that neither the said William H. Douglas, jr., Isaiah Ingham, or John Foster, nor the said Edwin Ludlow, cashier, nor the said defendant, nor any person or persons on their

36 behalf or on behalf of either of them, did or would, at the time the said bill of exchange was so presented and shown for payment thereof, as aforesaid, or at any time before or afterwards, pay the said sum of money therein specified, or any part thereof, but then and there wholly neglected and refused so to do; whereupon the said plaintiffs afterwards, to wit, on the said 21st day of September, A. D. 1857, when said bill of exchange became due, as aforesaid, at the city of New York, in the said State of New York, caused said bill of exchange to be duly protested for the said non-payment thereof; of all which said premises the said defendant, afterwards, to wit, on the day and year last aforesaid, at the said State of Ohio, had notice; by means whereof the said defendant there and then became liable to pay to the said plaintiffs the said sum of twenty hundred dollars, in said bill of exchange specified, together with one hundred and twenty dollars damages, being six per centum on the said sum of money in said bill of exchange specified, given upon the protest thereof, by the statute of the said State of Ohio in such case made and provided; and, being so liable, the said defendant, in consideration of the premises, afterwards, to wit, on the day and year last aforesaid, at the said
37 State of Ohio, and within the district aforesaid, undertook and faithfully promised the plaintiffs to pay to them, on request, the said several sums of money; yet the said defendant has not paid said several sums of money, or either of them, or any part thereof, although often requested so to do.

15. And, whereas, also, the said defendant, on the 25th day of November, A. D. 1857, at the State of Ohio, and within the district aforesaid, was indebted to the said plaintiffs in the sum of eighty thousand dollars, for money then and there paid by the plaintiffs for the use of the defendant, at its request, and in the sum of eighty thousand dollars, for money then and there had and received by the defendant for the use of the plaintiffs; and the defendant afterwards, to wit, on the day and year last aforesaid, at the State of Ohio, and within the district aforesaid, in consideration of the premises last aforesaid, undertook and faithfully promised the said plaintiffs to pay to them the said last mentioned sums of money when thereunto afterwards requested, yet the defendant has not paid said last-mentioned sums of money, or either of them, or any part thereof, although often requested so to do; but to pay the same has wholly neglected and refused, to the damage of the said plaintiffs one hundred thousand dollars, and therefore they bring suit, &c.

HENRY STANBERY,
HUNTER & DAUGHERTY,
Attorneys for Plaintiffs.

38 *Entry.*

And, afterwards, on the 16th day of February, A. D. 1858, the following entry was made upon the journal of said court, to wit: On motion of the defendant, by its attorneys, it is ordered that the time within which the said defendant may file its plea in this case be, and the same is hereby, extended to the third Tuesday of March next, and thereupon this cause is continued.

Pleas.

And, afterwards, to wit, on the 15th day of March, A. D. 1858, came the said defendant, by its attorneys, and filed its certain pleas in the words and figures following, to wit:

The circuit court of the United States for the southern district of Ohio.

JAMES LEE and BENJAMIN C. LEE, partners, doing business under the style of JAMES LEE & Co., plaintiffs,
vs.
THE CHILLICOTHE BRANCH OF THE STATE BANK OF OHIO, defendant.

First plea. And the said defendant, the Chillicothe Branch of the State Bank of Ohio, now comes and defends the wrong and injury, when, &c., and says that it did not assume and promise, in manner and form as the said plaintiffs, the said James Lee and Benjamin C. Lee, partners, doing business under the style of James Lee & Co., have above declared against it; and of this it puts itself upon the country, and the plaintiffs do the like.

Second plea. And for a further plea in this behalf, the said defendant, by leave, &c., says that the said plaintiffs ought
39 not to have or maintain their aforesaid action thereof against it, the said defendant, because it says that the said several bills of exchange in the plaintiffs' said declaration mentioned were respectively purchased by the said defendant, at the respective dates thereof, at Chillicothe, in the district aforesaid, and thereby, then and there, became the sole property of the defendant; and so being its sole property, the defendant, then and there, by James B. Scott, its cashier, indorsed the same, respectively, as follows, that is to say: upon the bill mentioned in the fifth count of the declaration, the following words: Credit my ac., James B. Scott, cas.; and upon each of the other bills in the declaration mentioned, the following words: Credit my ac. Jas. B. Scott, cas.; which said indorsements, without anything other or further, were and are the same indorsements alleged in the declaration to have been made by the defendant, and were and are the only indorsements of said bills, or of any or either of them, that has ever been made by the defendant or on its behalf. And having so indorsed the same, the defendant, then and there, sent the same to the office, in the city of New York, of the Ohio Life Insurance and Trust Company, of which company the said Edwin Ludlow then and there was cashier, which are the same deliveries of the bills respectively alleged in the decla-
40 ration to have been made to said Edwin Ludlow, cashier. And the defendant, in fact, saith that it indorsed and delivered said bills as aforesaid, without receiving or having received, or agreement to receive therefor, from the said Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, or any other

person or persons, natural or artificial, any consideration whatever; but, on the contrary, the said bills were so indorsed and delivered, merely for the purpose of being collected at their maturity, respectively, by the said Ohio Life Insurance and Trust Company, for the sole use and benefit of the defendant, and for no other purpose whatever. And the defendant further saith that it has never authorized, or in any manner empowered the said Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, either as cashier as aforesaid, or otherwise, to sell, pledge, hypothecate, or in any way transfer the said bills, or any or either of them, nor has it ever received or agreed to receive from the said Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, or any other person or persons, corporation or corporations whatever, any consideration or promise of consideration for said bills, or any or either of them, or for any transfer of the same, or of any or either of them. And the defendant further saith that the said several supposed causes of action set forth in the last count of the declaration are
41 the same supposed causes of action set forth in the several preceding counts thereof, to wit, the special counts thereof, and not other or different. All which the defendant is ready to verify. Wherefore, the defendant prays judgment, if the plaintiffs ought to have or maintain their aforesaid action thereof, against it, &c.

Third plea. And for a further plea in this behalf, the said defendant, by leave, &c., says, that the said plaintiffs ought not to have or maintain their aforesaid action thereof against it, the said defendant, because it says that the said several bills of exchange in the plaintiffs' said declaration mentioned were respectively purchased by the defendant, at the respective dates thereof, at Chillicothe, in the district aforesaid; and thereby, then and there, became the sole property of the defendant; and so being its sole property, the defendant then and there, by James B. Scott, its cashier, indorsed and delivered the same, respectively, to the Ohio Life Insurance and Trust Company, whereof, the said Edwin Ludlow then was, and ever since then hath been, the cashier; which said indorsements and deliveries were and are the same indorsements and deliveries alleged in the declaration to have been made by the defendant to the said Edwin Ludlow, cashier, and were and are the only indorsements of said bills, or of any or either of them, that has ever been
42 made by the defendant, or on its behalf. And the said defendant in fact saith, that it indorsed and delivered said bills as aforesaid, without receiving or having received, or agreement to receive therefor, from the said Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, or any other person or persons, natural or artificial, any consideration whatever; but, on the contrary, the said bills were so indorsed and delivered merely for the purpose of being collected at their maturity, respectively, by the said Ohio Life Insurance and Trust Company, at its office or agency in the city of New York, in the State of New York, for the sole use and benefit of the defendant, and for no other purpose whatever. And the defendant further saith, that it has never authorized or in any

manner empowered the said Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, either as cashier as aforesaid or otherwise, to sell, pledge, hypothecate, or in any way transfer the said bills, or any or either of them; nor has it ever received or agreed to receive from the said Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, or any other person or persons, corporation or corporations whatever, any consideration or promise of consideration for said bills, or any or either of them, or
43 for any transfer of the same, or of any or either of them. And the defendant further saith, that heretofore, to wit, on the 15th day of August, A. D. 1857, at the city of New York aforesaid, it was corruptly, and against the form of the statute of the State of New York in such case made and provided agreed by and between the said Ohio Life Insurance and Trust Company and the plaintiffs, that the plaintiffs should lend and advance to the said Ohio Life Insurance and Trust Company a certain sum of money, to wit, the sum of fifty thousand dollars, to be repaid by the said Ohio Life Insurance and Trust Company to the plaintiffs upon demand, and that for the forbearance of the same so long as the same should remain unpaid to the plaintiffs; the said Ohio Life Insurance and Trust Company should pay to the plaintiffs interest thereupon, from the time of said loan, at and after a greater rate than the rate of seven dollars upon one hundred dollars for one year, to wit, at and after the rate of ten dollars upon one hundred dollars for one year; and that for the securing the repayment of the said sum of 50,000 dollars, so to be lent and advanced as aforesaid, together with the usurious interest aforesaid, upon demand as aforesaid, the said Ohio Life Insurance and Trust Company should indorse to the plaintiffs the said several bills of exchange in the declaration mentioned.
44 And the defendant further saith, that in pursuance, and in part performance of the said corrupt and unlawful agreement, and upon no other consideration, the said Ohio Life Insurance and Trust Company, afterwards, to wit, on the day and year last aforesaid, at the city of New York aforesaid, by the said Edwin Ludlow, its cashier as aforesaid, did indorse and deliver the said several bills of exchange in the declaration mentioned to the plaintiffs, upon the terms aforesaid, which are the same indorsements and deliveries alleged in the declaration to have been made to the plaintiffs, and were, and are the only indorsement and delivery of said bills, or of any or either of them, ever made to the plaintiffs; and that, in further pursuance of said corrupt and unlawful agreement, the plaintiffs afterwards, to wit, on the day and year last aforesaid, at the city of New York aforesaid, did lend and advance to the said Ohio Life Insurance and Trust Company the said sum of money, to wit, fifty thousand dollars, upon the corrupt and unlawful terms aforesaid, and the said Ohio Life Insurance and Trust Company then and there undertook and promised the plaintiffs to repay to them the said sum of money, to wit, fifty thousand dollars, together with interest as aforesaid, at the unlawful and
45 usurious rates aforesaid, upon demand: whereby, and by

force of the statute of the said State of New York in such case made and provided, the said said several indorsements and deliveries of the said several bills of exchange to the plaintiffs as aforesaid, were and are, and each of them was and is, wholly void.

And the defendant further saith, that the said several supposed causes of action set forth in the last count of the declaration are the same supposed causes of action set forth in the several preceding counts thereof, to wit, the special counts thereof, and not other or different. All which the defendant is ready to verify. Wherefore the defendant prays judgment, if the plaintiffs ought to have or maintain their aforesaid action thereof against it, &c.

Fourth plea. And for a further plea in this behalf, the said defendant, by leave, &c., says, that the said plaintiffs ought not to have or maintain their aforesaid action thereof against it, the said defendant, because it says that the said several billsof exchange in the plaintiffs' said declaration mentioned, were, respectively, purchased by the defendant, at the respective dates thereof, at Chillicothe, in the district aforesaid, and thereby then and there became the sole property of the defendant; and so being its sole property, the defendant, then and there, by James B. Scott, its cashier, endorsed and delivered the same, respectively, to the Ohio Life Insurance and
46 Trust Company, whereof the said Edwin Ludlow then was, and ever since then hath been, the cashier; which said indorsements and deliveries were and are the same indorsements and deliveries alleged in the declaration to have been made by the defendant to the said Edwin Ludlow, cashier, and were and are the only indorsements of said bills, or of any or either of them, that has ever been made by the defendant or on its behalf.

And the said defendant in fact saith, that it indorsed and delivered said bills as aforesaid, without receiving or having received, or agreement to receive therefor, from the said Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, or any other person or persons, natural or artificial, any consideration whatever; but, on the contrary, the said bills were so indorsed and delivered merely for the purpose of being collected, at their maturity, respectively, by the said Ohio Life Insurance and Trust Company, at its office or agency, in the city of New York, in the State of New York, for the sole use and benefit of the defendant, and for no other purpose whatever.

And the defendant further saith, that it has never authorized or in any manner empowered the said Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, either as cashier as aforesaid, or otherwise, to sell, pledge, hypothecate, or in any way transfer the said bills, or any or either of them; nor has it ever received, or agreed to receive, from the said Ohio Life Insurance and Trust
47 Company, or the said Edwin Ludlow, or any other person or persons, corporation or corporations whatever, any consideration or promise of consideration for said bills, or any or either of them, or for any transfer of the same, or of any or either of them.

And the defendant further saith, that heretofore, to wit, on the first day of January, A. D. 1857, at the city of New York, in the

State of New York, it was corruptly, and against the form of the statute of said State of New York in such case made and provided, agreed by and between the said Ohio Life Insurance and Trust Company and the plaintiffs, that the plaintiffs should, from time to time thereafter, at the said city, lend and advance to the said Ohio Life Insurance and Trust Company such sums of money as the said Ohio Life Insurance and Trust Company might require and as the plaintiffs might be willing to lend to it, to be repaid upon demand, either in gross or in such parcels or instalments as the plaintiffs might from time to time require; and that for the forbearance of the same, or of any parcel or parcels thereof, so long as the same, or such parcel or parcels thereof, should remain unpaid to the plaintiffs, the said Ohio Life Insurance and Trust Company should pay to the plaintiffs interest thereupon, from time the time or times the same should be so loaned, at and after a greater rate than the rate of seven dollars upon one hundred dollars for one year, to wit, at and after the rate
48 of ten dollars upon one hundred dollars for one year; and that for for securing the repayment of the money or moneys that should be so loaned or advanced, together with the usurious interest aforesaid, upon demand as aforesaid, the said Ohio Life Insurance and Trust Company should, from time to time, transfer to the plaintiffs sufficient negotiable securities in that behalf.

And the defendant further saith, that in pursuance of the said corrupt and unlawful agreement so made as aforesaid, the plaintiffs afterwards, to wit, on the day and year last aforesaid, at the city of New York aforesaid, and on divers other days and times, between that day and the 25th day of August, A. D. 1857, at said city, lent and advanced to the said Ohio Life Insurance and Trust Company divers sums of money, in the whole amounting to a large sum, to wit, the sum of fifty thousand dollars, upon the terms aforesaid, and that for the securing the payment thereof, together with unlawful interest thereon as aforesaid, to be given and paid to the plaintiffs as aforesaid, according to the corrupt and unlawful agreement aforesaid, and upon no other consideration, the said Ohio Life Insurance and Trust Company afterwards, to wit, on the day and year last aforesaid, at the city of New York aforesaid, by the said Edwin Ludlow, its cashier as aforesaid, did indorse and deliver the said several bills of exchange in the declaration mentioned to the plaintiffs, upon
49 the terms aforesaid, (which are the same indorsements and deliveries alleged in the declaration to have been made to the plaintiffs, and were and are the only indorsement and delivery of said bills, or of any or either of them, ever made to the plaintiffs,) whereby, and by force of the statute of said State of New York in such case made and provided, the said several indorsements and deliveries of the said several bills of exchange to the plaintiffs, as aforesaid, were and are, and each of them was and is, wholly void. And the defendant further saith, that the said several supposed causes of action, set forth in the last count of the declaration, are the same supposed causes of action set forth in the several preceding counts thereof, to wit, the special counts thereof, and not other or different.

All which the defendant is ready to verify. Wherefore the defendant prays judgment, if the plaintiffs ought to have or maintain their aforesaid action thereof against it, &c.

Fifth plea. And for a further plea in this behalf, the said defendant, by leave, &c., says, that the said plaintiffs ought not to have or maintain their aforesaid action thereof against it, the said defendant, because it says that the said several bills of exchange in the plaintiffs' said declaration mentioned were, respectively, purchased by the defendant, at the respective dates thereof, at Chillicothe, in the district aforesaid, and thereby, then and there, became the sole property of the defendant; and so being its sole property, the defendant, then and there, by James B. Scott, its cashier, indorsed and delivered the same, respec-
50 tively, to the Ohio Life Insurance and Trust Company, whereof the said Edwin Ludlow then was, and ever since then hath been, the cashier; which said indorsements and deliveries were and are the same indorsements and deliveries alleged in the declaration to have been made by the defendant to the said Edwin Ludlow, cashier, and were and are the only indorsements of said bills, or of any or either of them, that has ever been made by the defendant, or on its behalf. And the said defendant in fact saith, that it indorsed and delivered said bills as aforesaid, without receiving, or having received, or agreement to receive, therefor, from the said Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, or any other person or persons, natural or artificial, any consideration whatever; but, on the contrary, the said bills were so indorsed and delivered merely for the purpose of being collected at their maturity, respectively, by the said Ohio Life Insurance and Trust Company, at its office or agency, in the city of New York, in the State of New York, for the sole use and benefit of the defendant, and for no other purpose whatever. And the defendant further saith that it has never authorized or in any manner empowered the said Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, either as cashier as aforesaid or otherwise, to sell, pledge, hypothecate,
51 or in any way transfer the said bills, or any or either of them; nor has it ever received or agreed to receive from the said Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, or any other person or persons, corporation or corporations whatever, any consideration or promise of consideration for said bills, or any or either of them, or for any transfer of the same, or of any or either of them. And the said defendant further saith that the said several bills aforesaid were indorsed and delivered to the plaintiffs by the said Ohio Life Insurance and Trust Company, by its cashier, the said Edwin Ludlow, and not by the said Ludlow in his individual capacity, which are the same indorsements and deliveries alleged in the declaration to have been made to the plaintiffs by the said Edwin Ludlow, cashier. And the defendant further saith that each of said bills was so indorsed and delivered to the plaintiffs as a security for the repayment by the said Ohio Life Insurance and Trust Company, to the plaintiffs, of moneys corruptly and unlawfully lent and advanced by the plaintiffs to the said Ohio Life Insurance and Trust

Company, after the first day of July, A. D. 1838, at the city of New York aforesaid, together with usurious and unlawful interest thereon, at and after a greater rate than the rate of seven dollars for the forbearance of 100 dollars for one year, corruptly, unlawfully, and secretly agreed to be paid by the said Ohio Life Insurance and Trust Company to the plaintiffs, and upon no other consideration; which moneys, and each and every parcel thereof, were corruptly and unlawfully so lent and advanced at and after a greater rate of
52 interest than the rate of seven dollars for the forbearance of one hundred dollars for one year, contrary to the statute of the State of New York in such case made and provided; whereby, and by force of the statute of the said State of New York in such case made and provided, the said several indorsements and deliveries of the said several bills of exchange to the plaintiffs as aforesaid were and are, and each of them was and is, wholly void. And the defendant further saith that the said several supposed causes of action set forth in the last count of the declaration are the same supposed causes of action set forth in the several preceding counts thereof, to wit, the special counts thereof, and not other or different. All which the defendant is ready to verify. Wherefore the defendant prays judgment if the plaintiffs ought to have or maintain their aforesaid action thereof against it, &c.

Sixth plea. And for a further plea in this behalf, the said defendant, by leave, &c., &c., says that the said plaintiffs ought not to have or maintain their aforesaid action thereof against it, the said defendant, because it says that the said several bills of exchange in the plaintiffs' said declaration mentioned were, respectively, purchased by the defendant, at the respective dates thereof, at Chillicothe, in the district aforesaid, and thereby, then and there, became the sole property of the defendant; and so being its sole property,
53 the defendant, then and there, by James B. Scott, its cashier, indorsed and delivered the same, respectively, to the Ohio Life Insurance and Trust Company, whereof the said Edwin Ludlow then was, and ever since then hath been, the cashier, which said indorsements and deliveries were and are the same indorsements and deliveries alleged in the declaration to have been made by the defendant to the said Edwin Ludlow, cashier, and were and are the only indorsement of said bills, or of any or either of them, that has ever been made by the defendant or on its belalf. And said defendant in fact saith that it indorsed and delivered said bills as aforesaid, without receiving, or having received, or agreement to receive, therefor, from the said Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, or any other person or persons, natural or artificial, any consideration whatever; but, on the contrary, the said bills were so indorsed and delivered merely for the purpose of being collected at their maturity, respectively, by the said Ohio Life Insurance and Trust Company, at its office or agency, in the city of New York, in the State of New York, for the sole use and benefit of the defendant, and for no other purpose whatever. And the defendant further saith, that it has never authorized or in any manner em-

powered the said Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, either as cashier as aforesaid, or otherwise,
54 to sell, pledge, hypothecate, or in any way transfer, the said bills, or any or either of them; nor has it ever received, or agreed to receive, from the said Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, or any other person or persons, corporation or corporations whatever, any consideration or promise of consideration for said bills, or any or either of them, or for any transfer of the same, or of any or either of them. And the defendant further saith, that the said several bills were indorsed and delivered to the plaintiffs, by the said Ohio Life Insurance and Trust Company, by its cashier, the said Edwin Ludlow; and not by the said Ludlow, in his individual capacity, which are the same indorsements and deliveries alleged in the declaration, to have been made to the plaintiffs, by said Edwin Ludlow, cashier. And the defendant further saith, that prior to and at the time when the said bills were so indorsed and delivered to the plaintiffs the said Ohio Life Insurance and Trust Company was indebted to the plaintiffs in a large sum of money, to wit, the sum of 50,000 dollars; and, being so indebted, the said Ohio Life Insurance and Trust Company, as securities for the payment by it to the plaintiffs of such pre-existing indebtedness, and upon no other consideration whatever, indorsed and delivered the said several bills to the plaintiffs in manner and form aforesaid. And the
55 defendant further saith, that the said several supposed causes of action set forth in the last count of the said declaration are the same supposed causes of action set forth in the preceding counts thereof, to wit, the special counts thereof, and not other or different. All which the defendant is ready to verify. Wherefore the defendant prays judgment, if the plaintiffs ought to have or maintain their aforesaid action thereof against it, &c.

Seventh plea. And for a further plea in this behalf, the said defendant, by leave, &c., says, that the said plaintiffs ought not to have or maintain their aforesaid action thereof against it, the said defendant, because it says that the said several bills of exchange in the plaintiffs' said declaration mentioned were respectively purchased by the defendant, at the respective dates thereof, at Chillicothe, in the district aforesaid, and thereby, then and there, became the sole property of the defendant; and so being its sole property, the defendant, then and there, by James B. Scott, its cashier, indorsed and delivered the same, respectively, to the Ohio Life Insurance and Trust Company, whereof the said Edwie Ludlow then was, and ever since then hath been, the cashier, which said indorsements and deliveries were and are the same indorsements and deliveries alleged in the declaration to have been made by the defendant to the said Edwin Ludlow, cashier, and were and are the only
56 indorsements of said bills, or of any or either of them, that has ever been made by the defendant, or on its behalf. And the said defendant in fact saith that it indorsed and delivered said bills as aforesaid, without receiving, or having received, or agreement to receive therefor, from the said Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, or any other person or persons,

natural or artificial, any consideration whatever; but, on the contrary, the said bills were so indorsed and delivered merely for the purpose of being collected at their maturity, respectively, by the said Ohio Life Insurance and Trust Company, at its office or agency, in the city of New York, in the State of New York, for the sole use and benefit of the defendant, and for no other purpose whatever. And the defendant further saith, that it has never authorized or in any manner empowered the said Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, either as cashier as aforesaid, or otherwise, to sell, pledge, hypothecate, or in any way transfer the said bills, or any or either of them; nor has it ever received, or agreed to receive, from the said Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, or any other person or persons, corporation or corporations whatever, any consideration or promise of consideration for said bills, or any or either of them, or for any transfer of the same, or of any or either of them.

57 And the defendant further saith, that the said several bills were indorsed and delivered to the plaintiffs by the said Ohio Life Insurance and Trust Company, by its cashier, the said Edwin Ludlow, and not by the said Ludlow in his individual capacity, (which are the same indorsements and deliveries alleged in the declaration to have been made to the plaintiffs by the said Edwin Ludlow, cashier,) they, the plaintiffs, then and there, when the said bills were so indorsed and delivered to them, well knowing all and singular the premises. And the defendant further saith, that the said several supposed causes of action, set forth in the last count of the said declaration, are the same supposed causes of action set forth in the preceding counts thereof, to wit, the special counts thereof, and not other or different. All which the defendant is ready to verify. Wherefore the defendant prays judgment if the plaintiffs ought to have or maintain their aforesaid action thereof against it, &c.

By VINTON TAFT, & PERRY, & THURMAN,
Its Attorneys.

Entry.

And afterwards, to wit, on the 13th day of May, A. D. 1858, the following entry was made upon the journal of said court, to wit: On motion of the plaintiffs, by their attorneys, the default for replication herein is set aside, and leave is given the said plaintiffs to reply to the pleas of the said defendant within thirty days from this date.

58 And this cause is continued to the next October term.

Entry.

And afterwards, to wit, on the 21st day of June, A. D. 1858, the following entry was made upon the journal of said court, to wit: "On motion of the plaintiffs, by their attorneys, it is ordered that the continuance heretofore entered in this case be, and the same is hereby, set aside, and leave given the said plaintiffs to file their replication herein by the first day of July next. And this case is continued.

Replication.

And afterwards, to wit, on the 22d day of June, A. D. 1858, came the said plaintiffs, by their attorneys, and filed their certain replication in this cause, in the words and figures following, to wit:

United States circuit court for southern district of Ohio.

JAMES LEE and BENJAMIN C. LEE, partners, doing business under the style of James Lee & Co.,
vs.
THE CHILLICOTHE BRANCH OF THE STATE BANK OF OHIO.

And now come the said plaintiffs, by their attorneys, and for replication to the said several pleas of the said defendant, say, 1. That as to the said plea of the said defendant by it first above pleaded, and whereof it hath put itself upon the country, the plaintiffs do the like. 2. And as to the said plea of the said defendant by it secondly above pleaded, the said plaintiffs say that the same, and the matters therein contained, in the manner and form as the same are pleaded, are not sufficient in law to bar or preclude the said plaintiffs from having and maintaining their aforesaid action thereof against it, the said defendant, and that the said plaintiffs are not bound by
59 law to answer the same; and this the plaintiffs are ready to verify. Wherefore these plaintiffs do demur thereto, and pray judgment and their damages, &c. 3. And as to the said pleas of the said defendant, by it thirdly, fourthly, and fifthly above pleaded, the said plaintiffs say, that they ought not, by reason of anything in said pleas alleged, to be barred or precluded from having and maintaining their aforesaid action thereof against the said defendant, because they say that the endorsements of the said several bills of exchange in the said declaration mentioned, so made by the said the Ohio Life Insurance and Trust Company, and each and every of them, was and were made by the said the Ohio Life Insurance and Trust Company, for a good and legal consideration, and not in pursuance of or upon the said corrupt and unlawful agreements, or either of them, or for the purpose or purposes in the said third, fourth, and fifth pleas of the said defendant mentioned, in manner and form as the said defendant hath above in its said pleas in that behalf alleged; and this the said plaintiffs pray may be inquired of by the country, &c. 4. And as to the said plea of the said defendant by it sixthly above pleaded, the plaintiffs say that the same, and the matters therein contained, in manner and form as the same are therein
60 pleaded, are not sufficient in law to bar or preclude the plaintiffs from having and maintaining their aforesaid action thereof against it, the said defendant, and that the said plaintiff sare not bound by law to answer the same; and this the said plaintiffs are ready to verify. Wherefore, the plaintiffs do demur thereto, and pray judgment and their damages, &c. 5. And as to the said plea of

the said defendant by it seventhly above pleaded, the said plaintiffs say that they ought not, by reason of anything in said plea alleged, to be barred or precluded from having or maintaining their aforesaid action thereof against the said defendant, because they say that they, the plaintiffs did not, nor did either of them know, at the time the said bills of exchange were so indorsed to them, or at any time prior thereto, that the said bills of exchange, or either of them, was or were indorsed to the said the Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, cashier, as aforesaid, without consideration, or for the purpose of being collected, as aforesaid, for the sole use and benefit of the said defendant, or that the said the Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, were not authorized to sell, pledge, hypothecate, or transfer the said bills of exchange, or either of them, in manner and form as the said defendant hath above in his said seventh plea alleged; and this
61 the said plaintiffs pray may be inquired of by the country, &c.

HENRY STANBERY.
HUNTER & DAUGHERTY,
Attorneys for Plaintiffs.

And afterwards, to wit, on the 21st day of July, A. D. 1858, came the said defendant, by its attorneys, and filed his certain rejoinders in this cause, in the words and figures following, to wit:

Rejoinders.

United States circuit court for the southern district of Ohio.

JAMES LEE and BENJAMIN C. LEE, partners, doing business under the style of JAMES LEE & Co., plaintiffs,
vs.
THE CHILLICOTHE BRANCH OF THE STATE BANK OF OHIO, defendant.
} No. 881.

Joinder in demurrer to 2d plea.—And the said defendant saith, that its plea by it secondly above pleaded, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude the said plaintiffs from having or maintaining their aforesaid action thereof against it, the said defendant, and the said defendant is ready to verify and prove the same, when, where, and in such manner as the said court here shall direct and award; wherefore, inasmuch as the said plaintiffs have not answered the said plea, nor hitherto in any manner denied the same, the said defendant prays judgment, and that the said plaintiffs may be barred from having or maintaining their aforesaid action thereof against the said defendant, &c.

Rejoinder to replication to 3d, 4th and 5th pleas.—And the
62 said defendant as to the said replication of the said plain-

tiffs to the said third, fourth, and fifth pleas, respectively, of the said defendant, and which the said plaintiffs have prayed may be inquired of by the country, doth the like.

Joinder in demurrer to 6th plea.—And the said defendant saith, that its plea by it sixthly above pleaded, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude the said plaintiffs from having or maintaining their aforesaid action thereof against it, the said defendant; and the said defendant is ready to verify and prove the same, when, where, and in such manner as the said court here shall direct and award. Wherefore, inasmuch as the said plaintiffs have not answered the said plea, nor hitherto in any manner denied the same, the said defendant prays judgment, and that the said plaintiffs may be barred from having or maintaining their aforesaid action thereof against the said defendant, &c.

Rejoinder to replication to 7th plea.—And the said defendant as to the said replication of the said plaintiffs to the said seventh plea of the said defendant, and which the said plaintiffs have prayed may be inquired of by the country, doth the like.

By VINTON, TAFT & PERRY, & THURMAN,
Its Attorneys.

63 And afterwards, to wit, on the 26th day of October, A. D. 1858, the following entry was made upon the journal of said court, to wit:

Entry.

On motion, leave is given the defendant to file an additional plea within twenty days, and to the plaintiffs to reply or demur thereto within thirty days thereafter. And leave is given the plaintiffs to withdraw their replication to the 3d, 4th, and 5th pleas, and to reply *de novo* to the same within twenty days, and to the defendant do rejoin or demur to such new replications within thirty days thereafter. And this cause is continued to the next April term.

And afterwards, to wit, on the 29th day of October, A. D. 1858, the following entry was made upon the journal of said court, to wit:

Entry.

On motion by H. H. Hunter, one of the attorneys for the plaintiffs, leave is given to said Hunter to take from the files the depositions taken by plaintiffs in these cases, subject to be returned on request.

And afterwards, to wit, on the 4th day of November, A. D. 1858, came the said defendant, by its attorneys, and filed its eighth plea in this cause, in the words and figures following, to wit:

8th plea.

The circuit court of the United States for the southern district of Ohio.

JAMES LEE and BENJAMIN C. LEE, partners, doing business under the style of JAMES LEE, & Co., plaintiffs,
vs.
THE CHILLICOTHE BRANCH OF THE STATE BANK OF OHIO, defendant.
No. 881.

And for a further plea in this behalf, the said defendant, by leave, &c., says that the said plaintiffs ought not to have or maintain
64 their aforesaid action thereof against it, the said defendant, because it says, that the said several bills of exchange in the plaintiffs' said declaration mentioned, were respectively purchased by the said defendant, at the respective dates thereof, at Chillicothe, in the district aforesaid, and thereby then and there became the sole property of the defendant; and so being its sole property, the defendant, then and there, by James B. Scott, its cashier, empowered the Ohio Life Insurance and Trust Company in the manner hereinafter stated, to receive payment at the maturity thereof, respectively, of the said several bills of exchange, for the use of the defendant, and for no other use whatever, that is to say: the defendant, by its said cashier, wrote on the back of the bill in the 5th count of the declaration mentioned, the following words, in the order following, and none others, to wit: Credit my ac't, James B. Scott, cash'r; and in like manner, wrote upon the back of each of the bills in the declaration mentioned, the following words, in the order following, and none others, to wit: Credit my ac't, Jas. B. Scott, cash'r; the name of said cashier being on each of the bills aforesaid, subscribed as aforesaid to the words, "Credit my ac't;" which said words, so written as aforesaid, without anything other or further, were and are the same supposed indorsements alleged in the declaration to have been made by the defendant, and no other or different words have ever been put upon said bills, or any or either
65 of them, by the defendant or on its behalf. And having so written said authority upon the same, the defendant then and there sent the same to the office in the city of New York, in the State of New York, of the Ohio Life Insurance and Trust Company, of which company the said Edwin Ludlow then and there was cashier, which are the same deliveries of said bills, respectively, alleged in the declaration to have been made to said Edwin Ludlow, cashier. And the defendant in fact saith, that it wrote said authority upon and delivered said bills as aforesaid, without receiving or having received, or agreement to receive therefor, from the said Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, or any other person or persons, natural or artificial, any consideration whatever; but, on the contrary, the said bills were so written upon and

delivered merely for the purpose of being collected, under said authority, at their maturity, respectively, by the said Ohio Life Insurance and Trust Company, for the sole use and benefit of the defendant, and for no other purpose whatever.

And the defendant further saith, that it has never authorized or in any manner empowered the said Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, either as cashier as aforesaid, or otherwise, to sell, pledge, hypothecate or in any way transfer the said bills, or any or either of them, nor has it ever received or
66 agreed to receive from the said Ohio Life Insurance and Trust Company, or the said Edwin Ludlow, or any other person or persons, corporation or corporations whatever, any consideration, or promise of consideration, for said bills, or any or either of them, or for any transfer of the same, or of any or either of them. And so the defendant saith, that it never has indorsed the said bills or any or either of them, to the said Edwin Ludlow, in manner and form as the plaintiffs have in their declaration alleged, nor has it ever indorsed the same, or any or either of them, to the said Ohio Life Insurance and Trust Company, nor to the said Edwin Ludlow, as its cashier, nor to any other person or persons, corporation or corporations whatsoever.

And the defendant further saith, that the said several supposed causes of action, set forth in the last count of the declaration, are the same supposed causes of action set forth in the several preceding counts thereof, to wit, the special counts thereof, and not other or different; all which the defendant is ready to verify. Wherefore the defendant prays judgment, if the plaintiffs ought to have or maintain their aforesaid action thereof against it, &c.

VINTON, TAFT & PERRY, & THURMAN,
Attorneys for Defendant.

Replication to 3d, 4th, and 5th pleas.

And afterwards, to wit, on the 7th day of February, A. D. 1859, came the said plaintiffs, by their attorneys, and filed their certain replication to 3d, 4th, and 5th pleas in this cause, in the words and figures following, to wit:

Circuit court of the United States for the southern district of
67 Ohio.

JAMES LEE & CO.
vs.
THE CHILLICOTHE BRANCH OF THE STATE BANK OF OHIO, at Chillicothe.

And the plaintiffs, as to the said pleas of the defendant thirdly, fourthly, and fifthly above pleaded, say they ought not, by reason of anything in said plea set forth and pleaded, to be barred from having

and maintaining their said action against the defendant, because they say that said defendant is a body corporate, duly authorized and organized as such according to law, in the State of Ohio, and doing and transacting business as such, at Chillicothe in the State of Ohio, and in the corporate name of The Chillicothe Branch of the State Bank of Ohio, at Chillicothe, and that as such, the said defendant has and exercises powers and privileges not possessed by individuals or partners, to wit: the power to issue notes and bills for circulation, and other banking powers, and is joint stock corporation; and because they say that the said Ohio Life Insurance and Trust Company, in the said plea of the defendant mentioned, at the time when the said bills of exchange were indorsed by the said company by its said cashier, Edwin Ludlow, and during a long time before that time, and from thence hitherto, was and still is a body corporate, duly organized as such according to law, in the State of Ohio, and doing and transacting business as such, at Cincinnati, in the State of Ohio, and at the city of New York, in the State of New York, in the corporate name of the Ohio Life Insurance and Trust
68 Company, and that it was a joint stock corporation having and exercising powers not possessed by individuals or partnerships, to wit: amongst others, the powers and privileges to transact business and make contracts as a body corporate, on the faith and credit of its capital stock, without other or further liability of its stockholders; and that as such body corporate, said Ohio Life Insurance and Trust Company, by its said cashier, endorsed and delivered to the plaintiffs said bill of exchange, at the said city of New York, in the State of New York; and that by an act passed by the legislature of the State of New York, on the 6th day of April, 1850, and which from thence hitherto was and still is in force, entitled "An act to prohibit corporations from interposing the defence of usury in any action," it was and is enacted by the first section thereof, as follows: "Sec. 1. No corporation shall hereafter interpose the defence of usury in any action." And by the second section thereof, it enacted as follows: "Sec. 2. The term corporation, as used in this act, shall be construed to include all associations and joint stock companies having any of the powers and privileges not possessed by individuals or partnerships." And by the third section thereof, it is enacted as follows: "Sec. 3. This act shall take effect immediately." And this the plaintiffs are ready to verify. Wherefore, they pray judgment, etc.

HENRY STANBERY,
HUNTER & DAUGHERTY,
Att'ys for Plaintiffs.

69 *Demurrer to 8th plea.*

And on the same day and year last aforesaid, to wit, on the 7th day of February, A. D. 1859, came the said plaintiffs by their attorneys, and filed their certain demurrer to 8th plea, in the words and figures following, to wit:

United States circuit court, southern district of Ohio.

JAMES LEE and BENJAMIN C. LEE, doing business under the style of James Lee & Co.,
vs.
THE CHILLICOTHE BRANCH OF THE STATE BANK OF OHIO, at Chillicothe.

And the plaintiffs, as to the eighth plea of the defendant above pleaded, say that the same, and the matters therein contained, are not sufficient in law to bar or preclude them from having or maintaining their said action against the defendant, and that they are not bound in law to answer the same. And thus they are ready to verify. Wherefore they pray judgment and their damages.

HENRY STANBERY,
HUNTER & DAUGHERTY,
Atty's for Plaintiffs.

Entry.

And afterwards, to wit, on the 2d day of May, A. D. 1859, the following entry was made upon the journal of said court, to wit: "By leave of the court, the defendant withdraws its second, third, fourth, fifth, sixth, and eighth pleas, and the plaintiffs withdraw their demurrers and replications to said withdrawn pleas, respectively. And it is ordered by the court that the said defendant pay the costs incident to said withdrawn pleas, and this cause is continued to next October term." And afterwards, to wit, on the 2d day of November, A. D. 1859, the following entry was made upon
70 the journal of said court, to wit: "The death of Benjamin C. Lee, one of the original plaintiffs in this case, being suggested, it is ordered that the further proceedings herein be prosecuted and carried on in the name of James Lee, survivor, &c., as plaintiff; and thereupon the case is continued to the next April term of this court." And afterwards, to wit, on the 25th day of April, A. D. 1860, the following entry was made upon the journal of said court, to wit: "This day came the parties by their attorneys, and thereupon came a jury, to wit, Theodore L. Smith, Martin Kagey, R. A. Constable, George Clinger, James H. Pierce, Joseph N. Pinney, James H. Baird, Amos Layman, Horace Luce, Williams L. Hudson, David Fisher, and D. S. Fitch, who were duly empanelled and sworn well and truly to try the issue joined between the parties; and the arguments of counsel not being concluded, the court adjourned the jury until to-morrow, at 9½ o'clock a. m., to which time this cause is continued." And afterwards, to wit, on the 26th day of April, A. D. 1860, the following entry was made upon the journal of said court, to wit: "This day again came the parties by their attorneys, and also the jurors heretofore empanelled and sworn herein, and the counsel not having concluded their arguments, the court adjourned the jury until to-morrow, at 9½ o'clock a. m., to which

time this cause is continued." And afterwards, to wit, on the
27th day of April, A. D. 1860, the following entry was
71 made upon the journal of said court, to wit: "This day again
came the parties, and also the jurors heretofore empanelled
and sworn herein, and the arguments of counsel not being concluded,
the court adjourned the jury until 9½ o'clock to-morrow morning, to
which time this case is continued." And afterwards, to wit, on the
28th day of April, A. D. 1860, the following entry was made upon
the journal of said court, to wit: "This day again came the parties,
and also the jurors heretofore empanelled and sworn herein, and on
request of counsel the court adjourned the jury until Tuesday morning
next, at half-past nine o'clock, to which time this cause is continued."

Judgment.

And afterwards, to wit, on the 1st day of May, A. D. 1860, the following entry of judgment was made upon the journal of said court, to wit: "This day came again the parties and also the jurors heretofore empanelled and sworn herein, who upon their oaths do say that the defendant did not assume and promise in manner and form as the plaintiff hath alleged against it.

"It is therefore considered that the defendant go hence without day and recover of the plaintiff its costs herein taxed at $613 97. And plaintiffs filed their bill of exceptions to the ruling of the court, which said bill was signed, sealed, and ordered to be made part of the record herein."

Bill of exceptions.

Said bill of exceptions is in the words and figures following,
to wit: In the circuit court of the United States for the 7th
circuit and southern district of Ohio, James Lee, survi-
72 vor, &c., vs. The Chillicothe Branch of the State Bank of Ohio
at Chillicothe, Assumpsit. Be it remembered, that on the
trial of this cause to the jury the plaintiff offered in evidence the bill
of exchange and the indorsements thereto, of which the following is
a copy: Copy.—$5,000.—Chillicothe, O., May 7, 1857. Four months
after date of this our first of exchange, second of the same tenor and
date unpaid, pay to the order of Jas. B. Scott, cashier, at ——, the
sum of fifty hundred dollars, for value received. Acceptance waived.
A. McDonald, Enos Prather, Nelson Prather. To E. Ludlow, Esq.,
Cash. Ohio Life Ins. & Trust Co., New York. Endorsed: "Credit
my account. Jas. B. Scott, Cr." "Edwin Ludlow, Cr." And
thereupon the defendant objected to the reading and giving in evidence to the jury the said bill of exchange and the said indorsements
thereon, but did admit that at the date of said bill of exchange
and from thence to the time of the maturity thereof, the said James
B. Scott was the cashier of the defendant, and that the signature
"James B. Scott, cash.," appearing upon the back of said bill of
exchange, and the words "credit my account," written above said
signature are in the proper handwriting of the said James B. Scott,

and were so written upon the back of said bill of exchange after the the drawing and delivery thereof and before the maturity thereof.

73 And thereupon the plaintiff offered further to prove and give in evidence to the jury that the said bill of exchange with the said signature "James B. Scott, cash," and words "Credit my account," written thereon, as aforesaid, was remitted by the said James B. Scott, as cashier of the defendant, before the maturity of said bill of exchange, to the said Edwin Ludlow, at that time cashier of the Ohio Life Insurance and Trust Company in the city of New York; and that the said Edwin Ludlow, as such cashier, before the maturity of said bill, indorsed and delivered the same to the plaintiffs, James Lee & Co., for a valuable consideration, *bona fide* paid. To the giving of which evidence so offered by the plaintiff, the defendant by its counsel objected, which objections of the defendant to the evidence so offered to be given by the plaintiff were sustained by the court, and the said bill of exchange, and the said indorsements thereon, were by order of the court excluded from the jury on the ground that said indorsement of said Scott, cashier, was a restrictive indorsement and stopped the negotiability of said bill, and that the plaintiff took no title thereunder; to which ruling of the court the plaintiff took an exception, and the same was then reduced to writing in manner and form above set forth, and the same is by the court here signed and sealed, and ordered to be made a part of the record, this 1st day of May, A. D. 1860.

JOHN McLEAN. [SEAL.]
H. H. LEAVITT. [SEAL.]

74 I allow a writ of error in this case.
Cincinnati, O., May 12, 1862.

N. H. SWAYNE,
Associate Justice Supreme Court U. S.

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, John McLean, clerk of the circuit court of the United States within and for said district, do hereby certify the foregoing to be a true and accurate transcript of the record of proceedings in the case of James Lee & Co. vs. The Chillicothe Branch of the State Bank of Ohio, as the same remains in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court this 13th day of May, A. D. 1862, and in the 86th year of the independence of the United States of America.

Attest: JOHN McLEAN, *Clerk, &c.*

75 THE UNITED STATES OF AMERICA:

Supreme Court of the United States to the Chillicothe Branch of the State Bank of Ohio, greeting:

Whereas James Lee and Benjamin C. Lee, partners as James Lee & Co., obtained the allowance of our writ of error to the circuit

court of the United States for the southern district of Ohio, directed, to remove into the said Supreme Court, to be holden at the city of Washington, on the first Monday in the month of December next, the record of a certain plaint, process, proceedings, and judgment in an action of assumpsit, wherein you, the said the Chillicothe Branch of the State Bank of Ohio, in that action lately recovered against the said James Lee and Benjamin C. Lee, partners as James Lee & Co., for costs, as by the said record in the said circuit court remaining appears, in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said James Lee & Co. we are informed, and our said writ of error granted, issued and allowed as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be, you are, therefore, hereby commanded and cited to be and appear before the judges of the said Supreme Court, at the city of Washington, at the next term of said court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the honorable Roger B. Taney, chief justice of the [SEAL.] United States of America, this 17th day of April, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States of America the 86th.

N. H. SWAYNE,
Associate Justice Supreme Court U. States.

I acknowledge service of the above citation.

A. G. THURMAN,
Att'y for Deft. in Error.

May 19, 1862.

76 SUPREME COURT OF THE UNITED STATES,
United States of America, ss:

The President of the United States of America to the honorable the judges of the circuit court of the United States, southern district of Ohio, greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a plea, which is in the said circuit court, before you, between James Lee and Benjamin C. Lee, partners as James Lee & Co., plaintiff, and the Chillicothe Branch of the State Bank of Ohio, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the first Monday in

the month of December next, in the said Supreme Court, then and there to be held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this seventeenth [SEAL.] day of April, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States of America the 86th.

Attest: JOHN McLEAN, *Clerk.*

Filed Dec. 8, 1862.

Supreme Court of the United States.

DECEMBER TERM, 1863.

JAMES LEE & BENJAMIN C. LEE,
Partners as James Lee & Co., Plaintiffs in Error.

vs.

THE CHILLICOTHE BRANCH OF THE STATE BANK OF OHIO,
Defendant in Error.

NO. ~~204.~~ 90

Mr. Thurman's Brief for Defendant in Error.

R. NEVINS, PRINTER, COLUMBUS, O.

Supreme Court of the United States.

DECEMBER TERM, 1863.

JAMES LEE & BENJAMIN C. LEE,
Partners as James Lee & Co., Plaintiffs in Error.

vs.

THE CHILLICOTHE BRANCH OF THE STATE BANK OF OHIO,
Defendant in Error.

NO. 204.

Mr. Thurman's Brief for Defendant in Error.

The action below was assumpsit, by Lee & Co., claiming to be endorsees, against the bank, averred to be an endorser, of divers bills of exchange. The declaration contained a special count on each bill, and a common count for money had and received. Printed Record, pp. 4 to 18, inclusive.

The defendant pleaded eight pleas; but subsequently withdrew all of them but the first and seventh. Printed Record, 34.

These remaining pleas were:

1. Non assumpsit. Printed Record, 19.
2. A special plea, (originally the 7th), ib. 26, 27.

To which the plaintiffs replied. Ib. 28, 29.

Pending the suit, Benjamin C. Lee, one of the plaintiffs, died, and his death being suggested, it was ordered "that the further proceedings herein be prosecuted and carried on in the name of James Lee, survivor, &c., as plaintiff." Printed Record, 34.

On trial by jury, the defendant had a verdict, on which the court gave judgment. Printed Record 34.

The plaintiffs took the following bill of exceptions: Printed Record, 35.

BILL OF EXCEPTIONS.

"In the Circuit Court of the United States, for the 7th Circuit and Southern District of Ohio. James Lee, survivor, &c., v. The Chillicothe Branch of the State Bank of Ohio, at Chillicothe. Assumpsit.

Be it remembered, that on the trial of this cause to the jury, the plaintiff offered in evidence the bill of exchange and the indorsements thereto, of which the following is a copy.

COPY.

$5,000 CHILLICOTHE, O., May 7, 1857.

Four months after date of this our first of exchange, second of the same tenor and date unpaid, pay to the order of Jas. B. Scott, Cashier at ———, the sum of fifty hundred dollars, for value received. Acceptance waived.

A. McDONALD,
ENOS PRATHER,
NELSON PRATHER.

To E. Ludlow, Esq., Cash. Ohio Life Ins. & Trust Co., New York.

ENDORSED:

"Credit my account.
JAS. B. SCOTT, Cr."
"EDWIN LUDLOW, Cr."

And thereupon, the defendant objected to the reading and giving in evidence to the jury the said bill of exchange and the said indorsements thereon, but did admit that at the date of said bill of exchange, and from thence to the time of the maturity thereof, the said James B. Scott was the Cashier of the defendant, and that the signature, "James B. Scott, Cash." appearing upon the back of said bill of exchange, and the words "credit my account," written above said signature, are in the proper handwriting of the said James B. Scott, and were so written upon the back of said bill of exchange after the drawing and delivery thereof and before the maturity thereof. And thereupon, the plaintiff offered further to prove and give in evidence to the jury, that the said bill of exchange with the said signature, "James B. Scott, Cash.," and words "Credit my account," written thereon, as aforesaid, was remitted by the said Jas. B. Scott, as Cashier of the defendant, before the maturity of said bill of exchange, to the said Edwin Ludlow, at that time Cashier of the Ohio Life Insurance and Trust Company, in the city of New York; and that the said Edwin Ludlow, as such Cashier, before

the maturity of said bill, indorsed and delivered the same to the plaintiffs, James Lee & Co., for a valuable consideration, bona fide paid. To the giving of which evidence so offered by the plaintiff, the defendant by its counsel objected, which objections of the defendant to the evidence so offered to be given by the plaintiff were sustained by the court, and the said bill of exchange, and the said indorsements thereon, were, by order of the court, excluded from the jury on the ground that said indorsement of said Scott, Cashier, was a restrictive indorsement and stopped the negotiability of said bill, and that the plaintiff took no title thereunder; to which ruling of the Court the plaintiff took an exception, and the same was then reduced to writing in manner and form above set forth, and the same is by the court here signed and sealed, and ordered to be made a part of the record, this 1st day of May, A. D. 1860.

JOHN McLEAN, [SEAL.]
H. H. LEAVITT. [SEAL.]

PRELIMINARY.

1. The writ of error purports to be sued out by James Lee & Benjamin C. Lee, partners, &c. But Benjamin died before it was allowed; indeed, before the judgment complained of was rendered. Printed Record, 34. I will contend that the writ should, for this reason, be quashed?

2. There is no assignment of errors in the Printed Record. Should there be none on file, when the cause shall be called for trial, I will ask that the writ be dismissed as provided by Rule 19 of this Court.

And see *Wells* v. *Martin*, 1 O. S. R. 386, 388.

OF THE MERITS.

I maintain that there is no error in the record; and will make the following points:

I.

A bill payable to order can not be transferred by parol, or by any writing but an *indorsement*, so as to give the transferee a right of action. Byles on Bills, 213 top, [114] margin; Id. 217 top, [117] margin; Chitty on Bills, [170.] Hence the plaintiffs' title to the bill in question depends upon the so called indorsements thereof.

II.

They conveyed no title to the plaintiffs, because:—

1. "Credit my account, Jas. B. Scott, Cas.," is not in law an indorsement. It does not transfer the bill, but is merely an authority or direction in respect to the money that may be paid in discharge of it. Consequently, neither the Trust Company or Ludlow ever had title to the bill, and, therefore, could not transfer it to the plaintiffs.

2. If it is in law an indorsement, it is "restrictive," and stopped the further negotiability of the bill. Hence, neither the Trust Company or Ludlow could transfer it.

(*a*) That it is not a full indorsement is obvious. For a full indorsement must contain words of transfer and name the transferee.

Byles on Bills, 215 top, [*115] margin; Chitty on Bills, (Am. Ed. of 1821, [*170] margin; 1 Jac. Law. Dic. 324; 1 Tomlin's Law. Dic. 239; Smith's Mercantile Law, 289; Edwards on Bills and Promissory Notes, 267, 268; Story on Bills, Secs. 204, 206.

Again: Every indorsement is in effect a *new* bill, and must therefore have a drawer, drawee and payee. And so it is with every full indorsement, and with every blank indorsement when filled up—the indorser being the new drawer, the payer being the drawee, and the indorsee being the new payee. Byles, 217 top, 117 margin; *Ballingalls* v. *Gloster*, 3 East. 481; *Heylin* v. *Adamson*, 2 Burr, 674; *Aymar* v. *Shelden*, 10 Wend. 439; *Slocum* v. *Pomeroy*, 6 Cranch, 221; *Case* v. *Heffner*, 10 O. R. 180; *Poage* v. *The State*, 3 O. S. R. 233; Story's Conflict of Laws, 261.

Hence, a full indorsement must order the payer to pay the money to a designated person, the indorsee.

This may be done by express words of command, as, "Pay the within to A. B.," or by words of transfer, as, "I indorse the within to A. B." Either of these formulas is, in legal effect, a transfer and a command to pay the indorsee.

But "credit my account" imports neither transfer or command to pay. There is not a word *of grant* in it, nor any designation of a grantee. Nor is there any command to any one *to pay*.

Inasmuch then as the words "credit my account" are wanting in two essential elements of a full or special indorsement, to wit:

1. Words of transfer;

2. A designation of an indorsee;

it follows that they do not constitute such an indorsement.

There are other reasons why they do not, that will be presently noticed. And it will also be shown, by direct and conclusive authority, that they do not.

(*b*) "*Credit my account, Jas. B. Scott, Cas.,*" is not a *blank* indorsement, technically speaking.

A blank indorsement is thus defined:

"A *blank* indorsement is made by the MERE signature of the indorser on the back of the bill; its effect is to make the instrument thereafter payable to bearer." *Byles*, 214 top, [114] margin.

"An indorsement in blank is by far the most common, and is made by the *mere* writing of the indorser's name on the back of the bill, without any mention of the name of the person in whose favor the indorsement is made." *Chitty* [174].

"A blank indorsement consists only of the name of the indorser." 1 *Jac. Law. Dic.* 324.

Same definition precisely. 1 *Tomlin's Law Dic.* 239.

"When the indorser *simply writes his name* on the back of negotiable paper, it is called an indorsement in blank, or a blank indorsement." *Edwards* 267.

"An indorsement is called an indorsement in blank, or a blank indorsement, when the signature of the party making it is *alone* put upon the bill, *without any words over or preceding it, expressive of any intention whatsoever.*" *Story on Bills*, sec. 206.

It follows that to make "Credit my account, Jas. B. Scott, Cas.," a blank indorsement, the words "credit my account" must be rejected. But this cannot be done. They are material words used for an important purpose, and the subscription "Jas. B. Scott, Cas.," instead of being independent of them and a mere blank indorsement, was meant to verify and give effect to them. One of the chief objects of such words as "credit my account," is to prevent the signature from being treated as a blank indorsement—to prevent anything else being written over it.

This will be more apparent when we come to look at the authorities presently cited, and consider the course of business of which the Court will ex officio take notice.

Again: The theory upon which a blank indorsement transfers a bill is, that whoever becomes the holder of the bill may write a transfer over the signature. In the language of the books, "the holder may write over it what he pleases," or more correctly, he "may fill it up with any contract consistent with the character of an indorsement." *Chitty* [173]; *Byles*, 216 top, [116] margin, note (2).

It was, at first, thought to be necessary to fill it up before bringing suit. It was afterwards held that it might be filled up at the trial, and the transfer would be good by relation; and it is now held that it may be filled up at any time before or after judgment.

But the theory yet remains that it is to be actually filled up, or to be considered as filled up, *from which it follows that there must be nothing in the way of filling it up.*

But as the words "credit my account" cannot be stricken out, it follows that any transfer that might be written over the signature Jas. B. Scott, Cas., would show that it was for the *credit of his account*—which is utterly inconsistent with the idea of a blank indorsement.

The declaration avers that the defendant indorsed the bill to Ludlow. Now, suppose that Ludlow had filled up the indorsement. It would then have read thus:

Pay to E. Ludlow, to credit my account.

JAS. B. SCOTT, Cas.

Thus showing that the money was to be paid to Ludlow, not for himself, but for the use of Jas. B. Scott, Cas.

Or, suppose that the plaintiffs were to strike out Ludlow's indorsement and fill up Scott's to themselves—which they may do, if Scott's is a blank indorsement—it would then read thus:

Pay Lee & Co., to credit my account.

JAS. B. SCOTT, Cas.

Showing that the money, if paid, would belong to the defendant, and that, consequently, Lee & Co. have no right of action against the defendant.

Yet again: When a bill is indorsed in blank, it passes, thereafter, by mere delivery.

Now, what kind of a title would pass by a mere delivery of these bills, where every holder must necessarily take them with the injunction upon him, and duty, to credit the proceeds, or money, to the account of Jas. B. Scott, Cas.? Plainly, this is wholly inconsistent with the idea of a blank indorsement.

I have thus shown, I submit, that "Credit my account, Jas. B. Scott, Cas.," is neither a full or a blank indorsement that passes title to the bill.

What then is it?

The authorities very satisfactorily answer.

Thus says Chitty:

"The payee or indorsee having the absolute property in the bill, and the right of disposing thereof, has the power of limiting the payment to whom he pleases; and, consequently, he may make a *restrictive* indorsement; thus *he may stop the currency of the bill*, BY GIVING A BARE AUTHORITY TO RECEIVE THE MONEY, as by an indorsement requesting the drawee to '*pay to A. for my use*,' or '*to I. S. only*,' or '*the within must be credited to A. B.*," *which modes prevent a blank indorsement from being filled up by the indorsee so as to convey any interest in the bill to himself, and from making a transfer of the bill*, etc., and, when made for the use of the indorser, is revocable in its nature *like a power of attorney*." *Chitty* [177].

And thus says the American editor of Chitty:

"The same doctrines have been recognized in the United States. A negotiable note indorsed in blank, or by a direction to pay the contents to A., omitting the words 'or order,' is further negotiable by the holder under such indorsement. *But an indorsement, 'pay the contents to my use,' or 'to the use of a third person,' or 'carry this bill to the credit of a third person,' is not an assignment of the security, but is only an authority to pay the money agreeably to the direction of the indorsement.*" *Chitty* [176], note (1).

Byles states the law to the same effect:

"The trust may be expressed on the bill itself by a restrictive in-

dorsement, or a *restrictive direction* appended to the payee's name, so that into whose hands soever the bill may travel, it will carry a trust on the face of it. The following have been held to be *restrictive directions* or indorsements: '*The within must be credited to A. B.;*' '*Pay to A. B. or order for my use;*' '*Pay to A. B. for my account;*' '*Pay to A. B. only.*'

"*A holder who takes a bill, the circulation of which was restricted by a restrictive direction or indorsement, cannot sue the drawer or acceptor upon it, but holds the bill or the money, raised by him as the trustee of the restraining party, and is liable to refund the bill or money received upon it to the party making the restrictive endorsement.* For such words can not be intended as a mere private direction to the immediate endorsee; for he is bound to account for the bill without any such direction; not to mention that the most obvious mode of conveying a private direction, would be either by oral communication, or by a letter enveloping the bill. Nor can they be a mere direction to the drawee; *for a restrictive indorsement constitutes not only the restricted indorsee, but his assignees,* AGENTS *to receive the money,* and for its misapplication, when so paid, the drawee is not responsible. As between the restraining indorser, therefore, and the immediate indorsee, or the drawee, the words 'to my use,' or the like, are of no effect. *But as between the restraining indorser and a subsequent indorsee, they are a notification that the restricted indorsee* HAS NO PROPERTY IN THE BILL, THAT HE IS A MERE AGENT AND TRUSTEE FOR HIS PRINCIPAL, AND THAT HE CAN APPOINT NO SUB-AGENT, EXCEPT FOR THE PURPOSE OF HOLDING THE BILL OR THE MONEY UPON A SIMILAR TRUST. *The subsequent indorsee, therefore, being himself* A MERE AGENT, CAN HAVE NO ACTION ON THE BILL IF IT IS DISHONORED, NOR HOLD IT, OR THE MONEY RECEIVED UPON IT, AGAINST THE PRINCIPAL; and if, instead of paying the money to the principal, he chooses to pay it to the intermediate agent, he becomes responsible for its misapplication." *Byles*, 222 top, [121] margin.

And Edwards:

"Thus, an indorsement in these words, 'Pay the contents to John Hallowell only,' prevents the bill from being again transferred; and an indorsement, 'Pay J. H. for my use,' or 'for my account,' SHOWS PLAINLY THAT THE INDORSER DOES NOT MEAN TO PART WITH THE

ABSOLUTE PROPERTY IN THE BILL, AND IS THEREFORE BARELY AN AUTHORITY TO RECEIVE THE MONEY UPON IT. *It imports that the indorsee receives the bill for a special purpose, and as a trustee for the party indorsing;* AND IS EQUIVALENT TO A DIRECT NOTICE TO EVERY PERSON TO WHOM IT MAY AFTERWARDS BE PRESENTED, THAT HE HAS NOT A RIGHT TO DISPOSE OF IT AS HIS OWN PROPERTY." *Edwards on Bills and Promissory Notes*, 277, 278.

In a later edition of Chitty than that from which I have quoted, it is said:

"It has long been settled, on the above principles, that any indorser may restrain the negotiability of a bill, by using express words to that effect, as by indorsing it, 'Payable to J. S. only;' or by indorsing it, 'The within must be credited to J. S.' (*Ancher* v. *Bank of England*, Doug. 637), or BY ANY OTHER WORDS *clearly demonstrating his intention to make a restrictive and limited indorsement.*" *Chitty on Bills*, 8th Edition, 1833, chap. 6, p. 258, note.

The above is quoted, with approbation, by Judge Story, in his work on Bills, and he says himself:

"It is not, perhaps, easy, in all cases, to assert what language will amount to a restrictive indorsement, or, in other words, what language is sufficient to show a clear intention to restrain the general negotiability of the instrument, or the general purposes to which the indorsement might otherwise entitle the indorsee to apply it. Where the indorsement is, 'Pay to A. B. only,' there the word 'only' makes it clearly restrictive, and does not authorize a payment or indorsement to any other party. So if a bill should be indorsed, '*The within to be accredited to A. B.*,' or '*Pay the within to A. B. for the use of C. D.*,' it would be deemed a restrictive indorsement, so far as to restrain the negotiability, *except for the very purposes indicated in the indorsement.* In every such case, therefore, although the bill may be negotiated by the indorsee, yet every subsequent holder must receive the money, *subject to the original designated appropriation thereof;* and if he voluntarily assents to, or aids in, any other appropriation, it will be a wrongful conversion thereof, for which he will be responsible." *Story on Bills*, sec. 211.

The cases very fully support the foregoing statements of the text

writers. It would extend this Brief unreasonably to do more than to quote from a few of them, and cite some others.

One of the first reported cases in which restrictive indorsements are mentioned, is *Snee* v. *Prescot*, 1 Atkyns, 249, decided in 1743; by which it appears that they were then common, and their legal effect perfectly understood and recognized. The syllabus of the case, on this point, is as follows:

"Notes or bills indorsed in this manner, *Pray pay the money to my use, will prevent their being filled up with such an indorsement as passes the interest.*"

Lord Chancellor Hardwicke, said:

"Promissory notes and bills of exchange are frequently indorsed in this manner, *Pray pay the money to my use, in order to prevent their being filled up with such an indorsement as passes the interest.* Mr. Lutwych, who was an experienced practitioner in this Court, always did so in his bills of exchange."

In *Edie* v. *The East India Co.*, 2 *Burr*, 1227, decided in 1761, Wilmot, J., said:

"*To be sure, he may give a mere naked authority to a person to receive it for him.* He may write upon it—'*Pray pay the money to my servant for my use,' or use such expressions as necessarily import that he does not mean to indorse it over, but is only authorizing a particular person to receive it for him and for his own use. In such case, it would be* CLEAR *that no valuable consideration had been paid him.*"

These remarks were approved in *Sigourney* v. *Lloyd*, hereinafter cited.

In *Ancher* v. *Bank of England*, decided in 1781, by Lord Mansfield and his associates, it was held, that an indorsement in these words: "*The within must be credited to Captain Morten Larsel Dahl, value in account*, Christiana, 17 January, 1778, Jens Mœstue," was a restrictive indorsement and *stopped the negotiability of the bill. Ancher* v. *Bank of England*, Douglas 637.

Treuttel & Wurtz v. *Barandon et al.*, decided in 1817, is a very important case. 8 *Taunton*, 100; 4 *E. C. L.* 33.

Two bills of exchange, indorsed by the payees as follows: "*Pay to J. P. De Roure, Esq., or order, for account of Messrs. Treuttel & Wurtz*," were pledged by De Roure with the defendants as a security

for moneys advanced and to be advanced by them to him. Treuttel & Wurtz brought trover against the defendants to recover the value of the bills, and the Court held that they were entitled to recover; the indorsement being full notice to the defendants that the bills were the property of Treuttel & Wurtz.

It will be observed that the action being *at law*, (trover), Treuttel & Wurtz had to show a *legal* title to the bills. The decision, therefore, that they should recover, in effect rules, that by the indorsement, De Roure took the bills merely as their agent, that the property in the bills passed to them, and that De Roure had simply an authority to collect for their benefit. And this notwithstanding the indorsement was to De Roure *or order*.

And it will also be observed that the case is a direct authority that the present defendant, the Chillicothe Branch Bank, could maintain trover against the present plaintiffs, Lee & Co., for the value of the bills in suit. And this being so, it is obvious that Lee & Co. cannot maintain the present action. See the closing sentences of Lord Mansfield's first remarks in Ancher v. The Bank of England, supra.

Sigourney v. *Lloyd and others*, decided by the Court of King's Bench in 1828, 1 *B. & C.* 622; 15 *E. C. L.* 319; and its judgment unanimously affirmed on error in the Exchequer Chamber, in 1829, 5 *Bing.* 525; 15 *E. C. L.* 527; is a case of the greatest value, for several reasons:

1. It was thoroughly argued and considered.

2. The language of both courts covers the whole ground, and it is distinguished by great force and good sense.

3. The decision was unanimous in both courts.

4. The indorsement was much stronger than in the present case, for it in clear terms ordered the money to be paid to the indorsee, and not to him only, but to him "or order."

Yet the indorsement was held to be restrictive. The syllabus of the case is as follows:

"A bill of exchange drawn in America, on a house in London, payable to order, was indorsed by the payee generally to A., and by him in these words: '*Pay to B. or his order, for my use.*' B. applied to his bankers to discount the bill, and they, without making any inquiry, did so, and applied the proceeds to the use of B. Held, that the in-

dorsement was *restrictive; that the property in the bill remained in A.*, and that he was entitled to recover the amount of the bill from the bankers."

I respectfully solicit the particular attention of the court to this case.

The same doctrine is very fully recognized by the American Courts.

In *Rice* v. *Stearns et al.*, Ch. Jus. Parsons, delivering the opinion of the Court, said: "It is also *settled* that when a negotiable security is indorsed, '*Pay the contents to my use*,' or, '*to the use of a third person*,' or, '*carry this bill to the credit of a third person*,' *such an indorsement is not an assignment of the security, but is only an authority to pay the money agreeably to the direction of the indorsement. There are other restricted indorsements also made, as 'Pay the contents to A. B. only.'*" 3 *Mass.* [227].

Wilson v. *Holmes*, was an action by indorsee against drawer of a bill, indorsed as follows: 'Pay Thomas Wilson, Esq., or order, for our use, value received in account. Benson, Abbott & Briggs." A verdict being rendered for the defendant, the plaintiff moved for a new trial. The motion was overruled, the Court, by Parsons, Ch. Jus., saying:

"The merits of this question, therefore, depend on the interest which Wilson, the plaintiff, had in this bill. His right to put the bill in suit in his own name, *must depend on the effect of the indorsement.* It is expressly made to him for the use of the payees. *Upon this indorsement, had there been no acknowledgment of value received in account,* WILSON WOULD HAVE NO PROPERTY IN THE BILL, GENERAL OR SPECIAL, AND HE COULD NOT RECOVER UPON IT IN HIS OWN NAME. But admitting that by the acknowledgment of 'value received in account,' it is the usage of merchants to consider the bill as transferred to the indorsee, as the factor of the indorser, who may sue it, either in his own name, or in the name of the indorser, of which admission we give no opinion, yet the same facts may be given in evidence against the factor as against the principal. And Wilson appearing in this case to have no property, unless as a mere factor, the evidence was properly admitted, the direction of the Judge, and the verdict in conformity to that direction are right, and a new trial cannot be granted." 5 *Mass.* [544.]

Drew v. *The Administrators of Jacocks*, was this. (For convenience I copy the whole case.) 2 *Murphey's* (N. C.) Rep. 138.

"A bill of exchange was drawn by defendant's intestate, on Samuel Jackson, of New York, in favor of Conway and Fortune Whittle, and protested for non-acceptance." On the bill there was an indorsement in the words following, to wit: 'Sent to William Drew, Esquire, to collect for Conway and F. Whittle.' This action was brought by William Drew, as indorsee; and it was submitted to the Court, whether the indorsement transferred the interest to William Drew, so as to enable him to maintain an action in his own name against the drawer.

"Taylor, Chief Justice, delivered the opinion of the Court:

"No particular form of words is necessary to make an indorsement; but the name of the indorser must appear on the bill, and it must be signed by him, or by some person authorized by him for that purpose. Indorsements, however, are of two kinds, general and restrictive, *the latter precluding the person to whom it is made from transferring the instrument over to another, so as to give him a right of action, either against the person imposing the restriction, or against any of the preceding parties.* SUCH AN INDORSEMENT MAY GIVE A BARE AUTHORITY TO THE INDORSEE TO RECEIVE THE MONEY FOR THE INDORSER, *as if it say, 'Pay the money to such a one for my use,' or use any expressions which necessarily imply that he does not mean to transfer his interest in the bill or note, but merely to give a power to receive the money. This is the case before us. It is evident, from the indorsement, that William Drew paid no valuable consideration for the note, and therefore could not sue the indorsers, nor indorse it to any other person who could sue either them or the preceding parties. The indorsement is restrained to him merely, and is to the same amount as if it had been 'pay the within to my use,' or, 'I indorse the within to William Drew' to collect for me.' These indorsements confine the bill in the hands of the indorsee to the very purpose for which they were made,* THE INDORSER NOT MEANING, EITHER TO MAKE HIMSELF LIABLE, OR TO ENABLE THE INDORSEE TO RAISE MONEY ON THE BILL. The action in this case can well be maintained in the name of William Drew."

It can hardly be necessary to cite more authority to show the nature and effect of a restrictive indorsement.

The weight of authority undoubtedly supports the statement of Ch.

Jus. Parsons, in *Rice* v. *Stearns et al.*, *supra* that "*such an indorsement is not an assignment of the security, but is only an authority to pay the money according to the direction of the indorsement;*" 3 *Mass.* [227.] and his statement in *Wilson* v. *Holmes*, *supra*, to wit:

"*Upon this indorsement had there been no acknowledgment of value received in account, Wilson would have no property in the bill, general or special, and he could not recover upon it in his own name.*" 5 *Mass.* [544.]

[And, here observe, that the indorsement under consideration does not purport to be for value.]

The very object of restrictive indorsements, said Lord Hardwicke, supra, is "*to prevent there being filled up with such an indorsement as passes the interest.*" *Snee* v. *Prescott*, 1 Atkyns, 249.

"*A mere naked authority to receive it for him,*" is Wilmot's definition, supra. *Edie* v. *E. In. Co.*, 2 Bur. 1227.

So, in *Sigourney* v. *Lloyd et al.*, supra, it was held: "*that the property in the bill remained in A.*" *the indorser.* 1 *B. & C.*, 622; 15 *E. C. L.*, 319; 5 *Bing.*, 525; 15 *E. C. L.*, 527.

"*A bare authority to the indorsee to receive the money for the indorser,*" said the Court in *Drew* v. *Jacocks*, *supra.* 2 *Murphey*, (N. C.) Rep. 138.

"*A bare authority to receive the money,*" says Chitty, supra. *Chitty* [177].

And again: "*Is only an authority to pay the money agreeably to the direction of the indorsement. Chitty* [176], note (1).

"*Restrictive directions or indorsements*" "*are a notification that the restricted indorsee has no property in the bill, that he is a mere agent and trustee for the principal,*" says Byles, supra. *Byles* 222 top, [121] margin.

"*Barely an authority to receive the money upon it,*" says Edwards, supra. *Edwards*, 277, 278.

(*c*) But if the legal title do pass to the restrained indorsee, it is nothing but the bare legal title, and he takes it as mere agent of the indorser, and cannot transfer the bill, unless the indorsement contain the words 'or order;' and, even in that case, the subsequent indorsee holds the bill upon the trust expressed in the first indorsement.

A restrictive indorsement "*stops the currency of the bill.*" It prevents the indorsee "*from making a transfer of the bill*, says Chitty, supra. *Chitty*, [177].

"The payee or indorsee having the absolute property in a bill or note and the right of disposing thereof, has the power of making what is called a restrictive indorsement, *precluding the person in whose favor it is made from making a transfer, so as to give a right of action against either the person making it, or any of the antecedent parties. Edwards*, [277].

And see *Ancher* v. *The Bank of England*, Douglas, 640, as follows:

Lord Mansfield: "It does *not* seem to me, that, after the special indorsement by Mœstue, Dahl himself could have indorsed it over."

Willes, J. "I am of the same opinion. *The question is, whether the negotiability is not restrained by the indorsement; and I think it is.*"

Ashhurst, J. "I am of the same opinion. * * * *I think Dahl himself could not have indorsed it.*"

And, *Drew* v. *Jacocks*, 2 Murphey (N. C.) Rep. 138, as follows:

"Indorsements, however, are of two kinds, general and restrictive; the latter *precluding the person to whom it is made from transferring the instrument over to another, so as to give him a right of action, either against the person imposing the restriction, or against any of the preceding parties.*"

III.

But if a bill restrictively indorsed can be transferred by the indorsee, *the subsequent indorsee takes it upon the same trust that was devolved upon the first indorsee, and can maintain no action upon it against the restraining indorser.*

The principle deduced from the cases is, that the restricted indorsee, whether he take the legal title to the bill or not, is the mere *agent of the indorser* to whom the bill belongs, and that if the legal title may pass by a subsequent indorsement, the subsequent indorsee occupies no better position, but is a mere *sub-agent* of the restraining indorser, the owner of the bill.

Hence, he can maintain no action against the restraining indorser;

for to allow that, would be to allow an agent to sue his principal for money belonging to the principal.

The principle is well stated by *Byles*, supra, in speaking of the nature and effect of restrictive directions or restrictive indorsements. He says:

"But as between the restraining indorser and a subsequent indorsee, they are a notification that the restricted indorsee has no property in the bill, that he is *a mere agent and trustee* for his principal, and that he can appoint no *sub-agent*, except for the purpose of holding the bill or the money upon a *similar trust*. The subsequent indorsee, therefore, being himself *a mere agent, can have no action on the bill if it is dishonored, nor hold it or the money received upon it, against the principal;* and if, instead of paying the money to the principal, he chooses to pay it to the intermediate agent, he becomes responsible for its misapplication." *Byles*, 223 top, [122] margin.

And thus says *Story*, supra:

"In every such case, therefore, although the bill may be negotiated by the indorsee, yet every subsequent holder must receive the money, subject to the original designated appropriation thereof; and if he voluntarily assents to, or aids in, any other appropriation, it will be a wrongful conversion thereof, for which he will be responsible." *Story on Bills*, sec. 211.

Ancher v. Bank of England, Treuttel & Wurtz v. Barandon et al., and Sigourney v. Lloyd, supra, are direct adjudications upon the question; for in each of these cases a recovery was had against the *subsequent indorsee.*

In the first of these cases, Lord Mansfield said:

"It does not seem to me, that after the special indorsement by Mœstue, Dahl himself could have indorsed it over. *Mœstue did not mean to make himself answerable as an indorser*, or to enable Dahl to raise money on the Bill."

Willes, J. "I am of the same opinion."

Ashhurst, J. "I am of the same opinion."

Wilson v. Holmes, supra, is also in point.

And *Drew v. Jacocks*, supra, as follows:

The restricted indorsee "could not sue the indorsers."

And again:

"These indorsements confine the bill &c., the indorser not meaning either to make himself liable," &c.

If, then, "Credit my account, Jas. B. Scott, Cas.," is a restrictive indorsement, there is an end of this action.

Can there be any doubt that if it is an indorsement at all, it is restrictive?

What are given in the books as examples of restrictive indorsements? (And let it be remembered that they are given as *examples*, and not as comprehending all cases of such indorsements).

1. "Pay to I. S. only." *Chitty*, *Byles*, *Story*.
2. "Pay to A. for my use." *Chitty*, *Byles*.
3. "The within must be credited to A. B." *Chitty*, *Byles*, *Story*.
4. "Pay the contents to my use." *Chitty*.
5. "Pay the contents to the use of A. *Chitty*.
6. "Carry this bill to the credit of A. *Chitty*.
7. "Pay to A. B., or order, for my use." *Byles*.
8. "Pay to A. B. for my account." *Byles*.
9. "Pay the within to A. B. for the use of C. D." *Story*.
10. "Pray pay the money to my use." *Ld. Hardwicke*.
11. "Pray pay the money to my servant for my use." *Wilmot, J.*
12. "The within must be credited to Captain Morten Larsel Dahl, value in account." *Douglas*, 637
13. "Pay to J. P. De Roure, Esq., or order, for account of Messrs. Treuttel & Wurtz." 8 *Taunton* 100, 4 E. C. L. 33.
14. "Pay to Mr. Samuel Williams, or order, for my use." 15 E. C. L. 320.
15. "Pay Thomas Wilson, Esq., or order, for our use, value received in account." 5 *Mass.* 544.
16. "Sent to William Drew, Esquire, to collect for Conway and F. Whittle." 2 *Murph.* 138.

Now had Ludlow filled up an indorsement over Scott's signature, how would it have read?

Thus:

Pay E. Ludlow Cas., to credit my account.

JAS. B. SCOTT, Cas.

Or,

Pay E. Ludlow, Cas., and credit my account.

JAS. B. SCOTT, Cas.

Or,

Pay E. Ludlow, Cas., credit my account.

JAS. B. SCOTT, Cas.

What is either of these but saying: Pay E. Ludlow, Cas., "*for my use*,"? Or, Pay E. Ludlow, Cas., *for my account*,"? each of which is put in the books as a restrictive indorsement.

Again:

"The within must be credited to A. B."

"Carry this bill to the credit of A."

are given as examples of restrictive indorsements.

But is not "Credit my account, Jas. B. Scott, Cas.," plainly the same as "The within must be credited to Jas. B. Scott, Cas." ?

Is it not more plainly restrictive than "Carry this bill to the credit of A.?"

Again: These bills were all drawn on E. Ludlow, Cashier of the Ohio Life Insurance and Trust Company, New York, and were therefore payable at the Agency of that Company in the city of New York.

Now the Court will *ex officio* take notice that it is the custom of the country to remit bills payable at a bank, to that bank for collection. The defendant was therefore in the strict observance of this custom, when it remitted these bills to the Cashier of that Company at its New York Agency. Looked at in the light of this custom, is it possible to doubt the meaning of "Credit my account, Jas. B. Scott, Cas.?" Without the aid of custom, I submit that its meaning is clearly settled by judicial decision—and could not be varied by proof of custom. But if this is not so, its meaning is palpable in the light of the above custom, of which this Court ex officio takes notice. That it will take this judicial notice, see the following cases: *Bank of Washington* v. *Triplett & Neale*, 1 *Pet.* 25, 30. *Bowliny* v. *Harrison*, 6 *How. U. S. R.* 258.

If it be said that "Credit my account" means to credit the *bill* and not the money that may be received upon it, I reply:

1. Such is not the natural import of the words.

2. The meaning of the words has been settled by judicial decision to be what I say it is.

3. Words are never to be construed to require an illegal thing, when they may be construed to require a thing that is legal. Now:

(1) The Trust Company was an Ohio corporation and had no corporate power to have an agency at New York to purchase or discount bills.

(2) The statute of New York forbade the purchase or discount of bills, in that State, by a foreign corporation. 1 *Rev. Stat. N. Y.*, Ed. of 1846, page 894, § 6, 9.

It is not admissible, therefore, to construe "Credit my account," to mean a sale or disconnt of the bill, in plain violation of the charter of the Company and said statute of New York.

(3) If "Credit my account" does mean to credit the bill, the indorsement is nevertheless restrictive. We have seen that "Carry this bill to the credit of A." is restrictive, and in the following cases the bills were carried to credit, and yet the indorsements were held to be restrictive: *Ancher* v. *Bank of England*, Douglas 637; *Truettel & Wurtz* v. *Barandon*, 9 Taunton, 100; S. C. 4 E. C. L. 33.

(4) If "Credit my account" was, prima facie, a sale of the bill, yet it was such by a restrictive indorsement which precluded liability on the part of the indorser.

We have seen that one of the objects of a restrictive indorsement is to prevent liability on the part of the indorser. In the language of the books, *he does not mean to be liable.* Hence, even if he does mean to part with the bill, he intends to do so in such a manner that he shall not be liable on his indorsement. It is the same as if he had indorsed the bill "without recourse." See authorities, *supra.*

IV.

But if the plaintiffs have title to the bill, yet no action thereon can be maintained against the defendant, because the name of the defendant does not appear upon it. It is neither drawn by, payable to, or indorsed in the name of the defendant. It is drawn by certain individuals, payable to James B. Scott, Cashier, and indorsed by him, without any designation, either in the bill or in the indorsement, of what, or of whom, he is the Cashier.

The law on this point is very fully laid down in *Pentz* v. *Stanton*, 10 Wend. 271. That was an action on a bill of exchange charged to have been drawn by one Henry F. West, by the name and description of "*H. F. West, Agent*," he, the said West, then and there being the agent and servant of the defendant in that behalf according to the custom of merchants. It was drawn on one Cary, accepted, and protested for non-payment. West testified that he was managing agent for defendant of a woolen factory; that he was authorized by defendant to make notes and bills of exchange in the name of the defendant, and as agent in his behalf; that this bill was given for goods bought by him of plaintiff for defendant and as his agent, and used in said manufactory. The court, in delivering its opinion said:

"The plaintiff cannot recover upon the bill of exchange against the present defendant. *His name no where appears upon it.* It was drawn and subscribed by West in his own name, with the simple addition of '*agent*,' *but without any specification whatever of the name of the principal.* Mr. Chitty, in his valuable treatise on bills, page 22, says: '*It is a general rule, that no person can be considered a party to a bill unless his name, or the name of the firm of which he is a partner, appears on some part of it.*' And Mr. Justice Buller, in *Fenn* v. *Harrison*, 3 T. R. 761, observes, "That in the case of bills of exchange, we know precisely what remedy the holder has, if the bill be not paid; *his security appears wholly on the face of the bill itself*; the acceptor, the drawer and the indorsers are all liable in their turns; *but they are only liable because they have written their names on the bill*; *but this is an attempt to make some other persons liable whose names do not appear on the bill.*

The Court further said:

"The import and legal effect of a written instrument must be gathered from the terms in which *it is expressed.*"

And again:

"There is no doubt that a person may draw, accept or indorse a bill of exchange, by his agent or attorney, and that it will be as obligatory upon him as though it were done by his own hand. But the agent, in such case, must either sign the name of the principal to the bill, or it must appear on the face of the bill itself, in some way or another, that it was in fact drawn for him, or the principal will not be bound. The particular form of the execution is not material, if it be substantially done *in the name of the principal.*"

And, furthermore:

"That this doctrine is very clearly stated in *Stackpole* v. *Arnold*, 11 Mass. 27, and in *Appidson* v. *Ladd*, 12 Mass. 173."

The Court then decided that West's testimony was inadmissible, on the ground that it went to vary a written contract that must speak for itself.

In *Stackpole* v. *Arnold*, 11 Mass. 28, the Court say:

"No person, in making a contract, is considered to be the agent of of another, unless he stipulates for his principal *by name*, stating his agency in the instrument he signs. This principle has been long settled and has been frequently recognized; *nor do I know an instance in the books of an attempt to charge a person as the maker of a written contract appearing to be signed by another, unless the signer professed to act by procuration or authority, and stated the name of the principal on whose behalf he gave his signature.* It is also held, that whatever authority the signer may have to bind another, if he does not sign as agent or attorney, he binds himself and no other person."

Moss v. *Livingston*, 4 Comstock, 208, (decided in 1850,) was an action on a bill of exchange drawn on and accepted by J. R. L., President of the Rosendale Manufacturing Company. The Court say:

"*The bill cannot be deemed the obligation of the Company. It does not purport to have been drawn on their behalf, nor was it addressed to them, or accepted in their corporate name. They were not, therefore, bound by it.* In order to give it any legal effect, we must hold it to be

the private act of the parties whose names are written upon it; and binding on them as an ordinary bill of exchange."

In *Dewitt* v. *Walton*, 5 Selden, 572, 573, a party had signed a note as agent for "The Churchman," a paper of which Walton, the defendant, was the proprietor. The Court say:

"That the plaintiff, in order to recover, would be compelled to establish, not only that the power existed, *but that it was executed in such manner as to bind the defendant.* The plaintiff has declared on a promissory note as his only cause of action. He must sustain his complaint by proof that the defendant was a party to the express contract on which he has counted."

After further commenting on this topic, they say:

"The good sense of the many authorities on this subject would seem to be, that where a party is sought to be charged on an express contract, it must, at least, appear *on the face of the instrument* that the agent undertook to bind his principal. The appellation by which the contractor may be distinguished, is of no importance; provided it be sanctioned by the principal, and embraced in the power conferred on the agent." Story on Agency, sections 147, 154, 155. Angel & Ames on Cor., section 293.

In *Leadbitter* v. *Farrow*, 5 Maule & Selwin, 348, Lord Ellenborough said:

"It was an universal rule, that a man who puts his name to a bill of exchange thereby makes himself personally liable, unless he states upon the face of the bill that he subscribes it for another, or by procuration of another, which are words of exclusion. Unless he says plainly, 'I am the mere scribe,' he becomes liable."

Byles on Bills, 26, 27, says:

"The rule of law as to simple contracts in writing, other than bills and notes, is, that parol evidence is admissible to charge unnamed principals; and so it is to give them the benefit of the contract; but it is inadmissible for the purpose of discharging the agent who signs in his own name. In the two former cases, the evidence is consistent with the instrument; but in the latter case it is inconsistent with the terms of it. *But it is conceived that the law as to negotiable instruments is in one respect different, and that where the principal's name does not appear, he is not liable on that bill or note.*"

And Edwards on Bills, page 83, lays down the same doctrine in these words:

"As between the makers or indorsers of promissory notes, or parties to a bill of exchange, and the bona fide holder, who has received the same in the usual course of business, it is necessary that the instrument *show on its face* by whom it was legally made; otherwise it will bind the parties executing it to a personal responsibility." Edwards, 83.

In *Beckham* v. *Drake et al*, 9 M. & W., 78, Lord Abinger said: "Case of bills of exchange are quite different in principle from those which ought to govern this case. By the law merchant, a chose in action is passed by indorsement, and each party when receiving the bill is making a contract with the parties upon the face of it, *and with no other parties whatever*."

And Parke, Baron, said: "Where a contract in writing not under seal is male in another name than that of the real principal, the real principal can sue and be sued, *but the case of bills of exchange is an exception*, which stands upon the law merchant; and promissory notes another, for they are placed upon the same footing by the statute of Anne. *In neither of these cases, can any but the parties named in the instrument, by their name or firm, be made liable to an action upon it.*"

Van Ness v. *Forest*, 8 Cranch, 30, was a case of a suit by Forest against the makers of a note payable to "Joseph Forest, President of the Commercial Company." Chief Justice Marshall, delivering the opinion of this Court, said: (Page 34.) "Such suit can be brought only in the name of Joseph Forest. It can no more be brought in the name of the Company, than if it had been given to a person not a member, for the benefit of the Company. The legal title is in Joseph Forest, who recovers the money, in his own name, as a trustee for the Company. Upon the record, and technically speaking, he is the sole plaintiff and the court can perceive no reasonable or legal objection to his sustaining an action on the note."

In *The President, Directors & Co., of the Bank of the U. S.* v. *Lyman et al*, U. S. Circuit Court, Vermont District, Boston Law Reporter, Vol. XI, old series, Vol. I, new series, page 156, it was held, that the Bank could not maintain an action upon a note payable to "Samuel Jaudon, Cashier," and that parol evidence was inadmissible

to show that the Bank was the real party in interest. I respectfully ask the particular attention of the Court to the learned opinion of Judge Prentiss in this case, and to the authorities cited by him.

Under this head I will also refer to *Evans* v. *Cramlington*, Carth, 5; *Cramlington* v. *Evans*, 2 Ventris, 307; *Sifkin* v. *Walker et al*, 2 Camp. Cas. 308; *Emly* v. *Lye et al*, 15 East. 7.

And in this case, on the trial in the Court below, Mr. Justice McLean held that the point under consideration was well made. Judge Leavitt expressed no opinion upon it, confining himself to the question whether the indorsement was restrictive; and holding that it was.

V.

In *The Bank of Genessee* v. *The Patchin Bank*, 3 Kernan, 309, Judge DENIO expressed his individual opinion, that an indorsement in blank of a bill, by the Cashier of a Bank, thus: "A. B., Cashier," would, *were it proved that the bill belonged to the bank and that the Cashier had authority to indorse it away*, entitle the holder to write over the signature, "For the Bank of," (naming it), and thus make it the indorsement of the bank.

The other judges expressed no opinion upon this point. So the case does not decide the point.

But if it did, being a commercial question, this court would not feel bound to follow it. *Swift* v. *Tyson*, 16 Peters, 1.

In *Bank of the State of N. Y.* v. *Farmers' Branch of State Bank of Ohio*, 36 Barbour's S. C. Rep. 332, it was decided, that an indorsement by defendant's Cashier, without naming the bank, could not be considered the indorsement of the bank, *in the absence of proof that he had authority to make the indorsement.*

So, were Judge DENIO'S opinion the law, the plaintiffs in error do not bring their case within it. For there is nothing in the defendant's charter, nor in any other law of Ohio, that authorizes a Cashier to indorse paper belonging to a bank. 1 S. & C Statutes of Ohio, 117. To do so he must have authority from the Board of Directors, *and there was no offer by the plaintiffs in the trial below, to prove that Janes B. Scott, defendant's Cashier, had any such authority; or that he had, in any manner, authority to indorse for the bank.*

That a Cashier of a bank has not, *virtute officii*, power to indorse away its securities, see:

Hallowell and Augusta Bank v. *Hamlin et. al.*, 14 Mass. 180.
Hartford Bank v. *Barry*, 17 ib. 97.
Salem Bank v. *Gloucester Bank*, ib. 28, 29.

VI.

The replication to the defendant's special plea traversed nothing contained in the plea but the averment of knowledge on the part of the plaintiffs. Nor did it set up anything in avoidance. The following averments of the plea are therefore admitted by the failure to traverse them, to-wit: (stating them briefly)—That the bills in suit were indorsed and delivered by Scott, Cashier, to the Ohio Life Insurance and Trust Co., of which Ludlow was Cashier, *merely for the purpose of being collected* by the Trust Co., at its agency in New York, *and without any consideration whatever. And that defendant never authorized said Company, or Ludlow, either as Cashier or otherwise, to sell, pledge, hypothecate, or in any way transfer said bills, or any or either of them.* But said Trust Co., by Ludlow its Cashier, did indorse and deliver them to the plaintiffs.

I will contend that, upon these admitted facts, and the bill itself and so-called indorsements thereof, offered in evidence, the *law* charged the plaintiffs with notice of the premises; or, which is the same thing, put them on inquiry; and that, therefore, they could not maintain their action against the defendant. And, hence, the rejection of their testimony did not prejudice them; and, therefore, affords no ground for a reversal of the judgment.

The particulars to which I will refer under this head, are:

1. That plaintiffs claim title to the bill, by virtue of an indorsement made *by the drawee*. But it is wholly out of the usual course of business for a drawee to indorse a bill. He is the payer of the bill, and *prima facie* at least, if he become the holder of it, it is a satisfied and discharged bill. Says Greenleaf:

"Where a bill of exchange, or an order for the payment of money, or delivery of goods, is found in the hands of the drawee, or a promissory note is in the possession of the maker, a *legal* presumption is

raised, that he has paid the money due upon it, and delivered the goods ordered." 1 Greenleaf's Ev. sec. 38.

In *Savage* v. *Merle*, 5 Pick. 85, which was a suit against the drawer of a bill, the Court said:

"The bill was sent on to the drawee in a letter to him and Merle, and directed to be passed to the credit of the plaintiff, which was done, except that the credit was given by W. & N. Wyer and not by Wyer & Merle. *It was functus officio as a bill, and could not have been negotiated, for it had got into the hands of the acceptor.*"

In *Beebe* v. *Real Estate Bank*, 4 Pike, 546, it was held that:

"The indorsement of a bill by the payee to the acceptor operates to discharge the liabilities of all parties to it, and no action can afterwards be maintained upon it as a bill of exchange. Its negotiability is destroyed, and cannot be revived by the acceptor indorsing it to a third person."

And see:

Shepherd v. *Currie*, 1 Starkie's Rep. 454.

But whether or not the bill was actually *functus officio* by being indorsed to the drawee, it was *prima facie* discharged, and therefore the plaintiffs were put on inquiry.

2. The Trust Company was the mere collecting agent of the paper having no title to, or interest in it, nor right to transfer it; and from the facts in the case, admitted and shown as aforesaid, *the law will presume that Lee & Co. knew that the Trust Company sustained the relation of collecting agent of the paper, and were consequently bound to inquire into the extent of that agency.*

On this subject it is well settled law, that if the indorsee knows the indorser to be an agent, and to hold the paper in that capacity, he is bound to inquire into the extent of the agent's authority, and he acquires by the indorsement such interest only as the agent was authorized to convey.

Edwards on Bills, page 252, lays down the doctrine on this subject in the following words, viz: "Where the person to whom an agent transfers negotiable paper is acquainted with the fact of his agency, it is his duty to inquire into the extent of his authority; and it is but reasonable that he should be deemed to acquire only such interest as the agent is authorized to convey." See same doctrine, Chitty

on Bills, (11th Am. Ed..) 200. In *Debouchet* v. *Goldsmid*, 5 Ves. 212, the Lord Chancellor said: "I take it not merely to be a principle of the law of England, but by the civil law, that if a person is acting *ex mandato*, those dealing with him must look to his mandate."

The deposit of negotiable paper for collection creates an agency; and the duties of the agent are regulated and to be ascertained like any other agency. If there be no special contract, then custom will govern the agency. Edwards on Bills, 476.

In this case there was no special contract with the agent, consequently custom will govern the agency. It will hereafter be shown what the custom or usage of trade is, in respect to the deposit of negotiable paper for collection—and also that all persons dealing in the paper are bound to take notice of the established usage or custom.

The agent to whom a bill is indorsed for collection is a holder for the purpose of presenting it for acceptance, payment, and giving notice of its dishonor. Edwards on Bills, 475, 476.

The law presumes that Lee & Co. knew it to be according to established custom and usage to deposit negotiable paper before its maturity, for collection with the bank where it is made payable. That was this case.

This custom or commercial usage has been repeatedly and fully recognized by this Court. In *Wallace* v. *McConnell*, 13 Pet. 150, in speaking of commercial usage in the collection of negotiable paper, the Court say: "Where a note or bill is made payable at a bank, as is generally the case, it is well known that according to the usual course of business, the note or bill is lodged at the bank for collection.

And in *Bowling* v. *Harrison*, 6 Howard, 258, the Court say on this subject, "That a very large portion of the commercial paper used in this country is similar to that which is the subject of the present suit (the suit in that case). They are notes made payable at a certain bank. The last indorser or owner transmits it to the bank for collection; if funds are not deposited there to meet it when due, it is handed to a notary or agent of the bank, who makes demand and protest, and gives notice of the dishonor to the indorsers." The case of *Bank of Washington* v. *Triplett*, 1 Pet. 30, shows in what form it is the custom or usage to send such paper for collection to the place where it is pay-

able. The Court say: "The custom to indorse a bill put in bank for collection is universal."

It is the plain and unavoidable result of these authorities, that as the bill was payable at the Trust Company, the law will presume Lee & Co. knew when they took it, that *according to the usual course of business*, it had been lodged at the place of payment for collection, and that the Trust Company did not hold the paper as owner, but as agent.

This presumption of law made it their duty to inquire before they took the paper; and was conclusive against them, unless they proved that the Trust Company owned the bill. But, so far from proving or offering to prove that, they admitted by the pleadings, as already shown, that the Trust Company did not own it, but held it merely for collection, and that the defendant owned it.

The practice or custom of lodging paper in the bank where it is payable for collection before its maturity, being a general, well known, and established usage, which has been, as shown above, often judicially recognized as according to the usual course of business, it is not necessary by proof to bring home to the party who has dealt in such paper knowledge of the usage.

The law merchant being founded on the usages of trade, they are supposed to be so well known, that where the law is settled, proof of the usages of merchants is not admissible; nor can they be contradicted when they have been judicially recognized. *Eddie* v. *East India Co.* 2 Burrows, 1224; *Grant* v. *Vaughn*, 3 Burrows, 1523, 1528; *Stone* v. *Rawlinson*, Wells' Rep. 561; *Cokendorfer* v. *Preston*, 4 Howard, 326; *Adams* v. *Otterback*, 15 Howard, 545.

It being the presumption of law that the bill, made payable at the Trust Company, was deposited there for collection, Lee & Co. had no right to presume that that Company had discounted it, and had thus become its owner; because such presumption by them would contradict the presumption of law; and also because such discount is forbidden by the restraining act of New York, which prohibits a foreign corporation from discounting notes or bills, and consequently the Trust Company could acquire no title to the bill by discount. 1 vol. 893 of 3d Edition of Laws of New York; 2 vol. 981 of Ed. of 1859; *Pennington* v. *Townsend*, 7 Wend. 276; *De Groat* v. *Vandusen*, 20 Wend. 390; *New Hope Co.* v. *Poughkeepsie Silk Co.*, 25 Wend. 648, 650; *Mumford* v. *Am. Life Ins. Co.*, 4 Comstock, 481.

It follows from what is said above that Lee & Co. took the bill, made payable at the Trust Company, contrary to the usages of trade, and with notice that it was not the property of that Company.

In Edwards on Bills, page 280, it is said: "The holder of a bill cannot deduce his title through an indorsement which is not made in compliance with the established custom of merchants."

3. The form of indorsement, "Credit my account, Jas. B. Scott, Cas." has been in use so long and so extensively, as indicating an indorsement for collection merely, or, rather a mere authority to receive the money for the use of the indorser, that it is entitled to judicial recognition as a customary formula for that purpose. And, therefore, the plaintiffs were bound to notice it.

4. The plaintiffs were also bound to take notice of the New York statute, already cited, prohibiting foreign corporations from buying or discounting bills of exchange in that State. The Ohio Life Insurance and Trust Company was such foreign corporation. It was chartered by the General Assembly of Ohio, Feb. 12, 1834. 32 O. L. L. 68; and its charter is a public act, (Sec. 28), of which this court takes judicial notice. *Pennington* v. *Gibson*, 16 How. 65.

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